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# CELEBRATED TRIALS

CONNECTED WITH

THE UPPER CLASSES OF SOCIETY,

IN THE

**Relations of Private Life.**

BY

PETER BURKE, ESQ.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

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## P R E F A C E.

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THE Editor's collection of Celebrated Trials, of a domestic nature, relative to the nobility, published about two years ago, having been favorably received, he is induced to bring out this series, which may be regarded in a certain measure as supplemental to the former one. The volume of aristocratic trials, including those only in which some titled person was more or less concerned, necessarily passed over many curious and important judicial investigations appertaining to parties of note and rank, though not bearing any titular distinction. This new series supplies the deficiency, and embraces probably every remaining famous cause of unpolitical character, whose notoriety, both on account of the strangeness of the affair itself and the eminence of some of the actors in it, created a wide and stirring sensation at the time it occurred. In the present volume the plan of the former one is strictly carried on. The same regard has been had to the giving of brief historical and genealogical information when necessary, and to the exclusion of all matter of an improper or indelicate nature. Like the previous collection, this series purports to present a narrative of facts only, and therefore legal arguments

and legal disquisitions are avoided ; yet the law student may here derive equal benefit, to what it is trusted he did in the prior volume, from observing the form and process of each trial, and from perusing the speeches of the most eminent counsel and judges, which as much as possible are carefully retained. This volume will probably be found to exceed its predecessor in interest ; unfolding, as it does, many a tale of event so strange and of crime so dreadful that it would be hardly possible for poet or romancist of the wildest imagination to conceive similar means, even in story, of disturbing the course of human events. Here, indeed, truth is more terrible than fiction.

The consideration of presenting the main features of each trial, without gloss or alteration exactly as it passed, leads the editor to allude to a charge of extracting largely, which was brought against his former volume. The complaint, however, it is presumed, becomes manifestly absurd with regard to such a book as this or the preceding one, where the very interest rests in there being nothing drawn from the imagination, but in everything being taken from the various reports of facts which have verily occurred. To lay the reality before the reader, the editor must, of course, recur to narratives already published, and must make all his extracts from them. His intent has been not to imagine or invent, but to state things, and terrible things too, just as they have happened. To borrow from the language of a great judge on a great occasion recorded in this book, he would not add the taper-light of comment or amplification to the broad glare of daylight guilt that pervades these but too true disclosures of vice and enormity. Yet in this mere system of compilation the editor's labours have been very far from slight or easy ; on the contrary, he has found extreme difficulty in collecting the narratives of these

trials together, owing to the strange, but no less certain, circumstance that, though reports of the law laid down are strictly preserved, there is no general and consecutive record of the facts regarding events of a domestic nature, however important, which may have been the subject of investigation in the courts of justice in this country. Some few private causes have, indeed, made their way into the State Trials; but when the editor could not discover his matter there, he has had to seek it among the wretchedly garbled accounts to be found in criminal calendars, old magazines, and the scarce remains of ephemeral pamphlets, printed as each offence occurred. To collate and reduce these into intelligible reports, has proved a task of exceedingly toilsome research, arrangement, and elucidation. To instance this, the editor may mention that he could make no sense out of any report of Fauntleroy's trial, published in a series, until he referred to the *Times* newspaper of the day; and that, even with regard to a trial of such recent moment as that of Rush, he was able only through chance verbal accounts to amend the imperfect and contradictory written narratives of it. The editor is the more inclined to insist upon the experience of this difficulty, from the extraordinary and unseemly nature of it, in a country such as this. The editor would further observe, that in making all these necessary extracts, he has, as much as possible, carefully abstained from trenching on the productions, new or compiled, of previous known authors; and where he has been obliged, however slightly to do so, he has willingly acknowledged the obligation, and he therefore flatters himself that he has avoided all danger of offence or injury to any writer of originality or distinction. He cannot, too, omit to state, that he has been much assisted in his labours by



one periodical publication—the Annual Register, which, though not perfect, is by far the best arranged and best written work of the kind in England.

The editor would conclude with one observation more, which applies to this as to the previous series. In publishing these celebrated trials concerning the higher classes, he has not the most distant intent or idea of depreciating the well-known and wide spread worth and reputation of those superior orders of society, which are the best in the realm ; and even if he had, this book like the former, would utterly defeat such an object. The misdeeds it records are few and far between—a minute fraction in the great sum of offences committed in this country. The work brings really farther proof to the proposition, that as society rises, crime decreases. Many reasons may be alleged for this ; yet, is it not more fair and more cheering to mainly attribute it to those best causes of all good—religion and education, which, when combined, reach more readily and more easily the high and the affluent, and which, wherever they do obtain a holding, unerringly prove to be the sole invincible victors over the debasement, the malignity, and the perversity of sin ?

TEMPLE, MAY, 1851.

# CELEBRATED TRIALS

CONNECTED WITH

## THE UPPER CLASSES OF SOCIETY.

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### ARDEN OF FEVERSHAM.

*Mosby.* In Feversham, there lives a man call'd Arden,  
In general esteem, and ample means;  
And has a wife the very pride of nature.  
I have been happy long in her affections,  
And, he once dead, might with her share his fortunes.  
He's jealous, too, of late, and threatens me.  
Love, interest, self defence, all ask his death.

*Black Will.* This man you'd have despatched?

*Mosby.* I would.

*Black Will.* Rich, you say?

*Mosby.* Immensely so.

*Black Will.* And much beloved?

*Mosby.* By all degrees of men.

LILLO.

THIS, one of the earliest, detailed domestic murders on record, is, despite of its harrowing incidents, strangely interesting, as affording an insight into private society at a period when England was in a state of change from feudal coarseness to modern civilization; when vice became more crafty and cautious, though less openly daring. The story of Arden of Feversham has furnished a subject for more than one poet and romancist. George Lillo, the famous author of "George Barnwell," who seems to have had a fancy for horrors, wrote a tragedy on the murder of Arden, which not only included the dark doings of the original tale, but also introduced new terrors of his own. The narrative itself, as we in reality have it, hardly needed this, since it is sad enough in all conscience. One cannot but remark throughout the affair, the singular interference of Providence in saving the unfortunate Arden so many times, a circumstance

which adds to the regret of finding him at last the victim of his cruel assassins. We here give the facts of the murder, with but little alteration, in the very language of the quaint record of it which has been handed down.

Thomas Arden was in the reign of King Edward IV. a private gentleman, living at Feversham, in the county of Kent; yet the circumstance of his murder, the detection of it, and the punishment of the offenders were exceedingly remarkable. He was a tall and comely person, and married a gentlewoman, who was young, well-shaped, and every way handsome; who having unhappily contracted an unlawful affection for one Mosbie, a black swarthy fellow, servant to Lord North, it happened by some means or other that they fell out, and so continued at variance for some time; but she being desirous of a reconciliation, and to use her former familiarity with him, sent him a pair of silver dice by the hands of one Adam Foule, living at the Flower-de-Luce, in Feversham, for a present.

This brought them together again, so that Mosbie lay often in Arden's house, and in a short time the friendship between them was so open, that Mr. Arden could not but perceive it; although common report says that he winked at it, for fear of disobliging her relations, from whom he had some great expectations. Having continued thus for a considerable time, the woman doated more and more upon Mosbie, and began to loath her husband extremely; insomuch that she would have been glad to have found out a way to get rid of him. There was a painter at Feversham, who was reported to be versed in the art of poisoning; to him she applied herself, and asked him, "Whether he had any skill in that or not?" The man seeming to own it, she told him, "She would have such dose prepared as would make a quick despatch." "That I can do," said he; and so he presently went to work, gave it her, with directions to put it into the bottom of a porringer, and so to pour milk upon it: but the woman forgetting the direction, put in the milk first, and then the poison. Now her husband designing that day to take his horse and ride to Canterbury, his wife brought him his breakfast, which was usually milk and butter. Having taken a spoonful or two of the milk, and liking neither the taste or colour of it, he said, "Mrs. Alice, what sort of milk is it you gave me?" Upon which she threw down the dish, and said, "I find nothing can please you:" upon which he went away for Canterbury, and by the way vomited extremely, so that he escaped for that time.

Arden's wife became afterwards acquainted with one Green, of Fever-

sham, a servant of Sir Anthony Aucher's ; from which Green, Arden had wrested a piece of ground, lying on the back side of the abbey of Feversham ; about which some blows and many menacing expressions had passed between them ; and therefore the woman knowing that Green hated her husband, she began to concert with him how to make away with Arden. The agreement at last was thus : that if they could procure any one to murder her husband, he should have ten pounds for his wicked pains. Now Green having some business to be transacted at London, for his master Sir Anthony, set out for that city, where his master then was, and having a charge of money about him, he desired one Bradshaw, a goldsmith of Feversham, and his neighbour, to go with him as far as Gravesend, and he would satisfy him for his trouble. When they had got as far as Rainham Down, they saw some gentleman coming ; Bradshaw discerned a man coming up the hill from Rochester, armed with a sword and buckler, and another with a huge staff upon his shoulder, and thereupon said to Green, " It is well that there is some company coming after us, for there is coming up against us as murdering a villain as any in England ; and were it not for the other people, we should scarce be able to come off without the loss of our lives and money." Green, as he afterwards confessed, imagining that such a one was fit for his purpose, asked the other, " Which is he ? "—" That's he," quoth Bradshaw, " who has a sword and buckler ; his name is Black Will."—" How do you know that ? " said Green : Bradshaw answered, " I knew him at Boulogne, where he was a soldier and I was Sir Richard Cavendish's man, and there he committed several robberies and horrid murders, between the passes of that town and France."

By this time the company having overtaken them, they advanced all together, and met Black Will and his companion. Some of the strangers, knowing Black Will, asked him how he did, whither he was going ? he answered, " By my blood," for he accented almost every word with an oath, " I know not, neither do I care, I'll set up my stick, and go as it falls."—" Then," said they to him, " if you will go back with us to Gravesend, we will give you a supper."—" I care not," said he, " I'll go along with you." As they travelled on, Black Will claimed an acquaintance with Bradshaw, saying, " I'riend Bradshaw, how dost thou do ? " Bradshaw, having no mind to renew his acquaintance, or to have any thing to do with the fellow, replied, " Why, do you know me ? "—" Yes, that I do," said he, " did we not serve together at Boulogne ? "—" I beg your pardon," said Bradshaw, " I had forgot you."

Then Green entered into discourse with Black Will, and said, "When you have supped, come to my quarters, at such a sign, and I will give you some sack and some sugar."—"I thank you," said he. Thither he went, according to his promise, and was well-treated. Then Green and he went and talked together, aside from Bradshaw, and the former proposing to give the other ten pounds to kill Mr. Arden, he answered, with a great oath, "He would if he could but know him."—"I'll show him to you to-morrow, in St. Paul's," said Green. When they had done talking, Green bid him go home to his quarters; and then sitting down, he wrote a letter to Mrs. Arden, wherein among others, he made use of these expressions:—"We have got a man for our purpose; we may thank my brother Bradshaw for it." Bradshaw knowing nothing of the matter, took the letter, and went the next morning and delivered it to Mrs. Arden, while Green and Black Will bent their course to London.

Green, at the time appointed, showed Black Will Mr. Arden, walking in St. Paul's; upon which Black Will asked him, "Who is he that follows him?"—"Marry," said Green, "one of his men."—"By my blood," quoth Will, "I'll kill them both."—"Nay," said Green, "do not do that, for he is in the secret."—"I care not for that, I will kill them both," replied he. "By no means," said Green. Then Black Will proposed to murder Mr. Arden in Paul's Church-yard, but there were so many gentlemen with him, that he could not effect it. Green imparted the whole discourse to Arden's man, whose name was Michael, and who ever after was afraid lest Black Will should kill him. The reason why Michael conspired with the rest against his master was because he should marry a kinswoman of Mosbie's.

Mr. Arden taking up his lodgings in a certain parsonage-house which he had in London, Michael and Green agreed that Black Will should go thither in the night-time, where he should find the doors left open for him to go in and murder Mr. Arden. Michael having put his master to bed, left the doors open according to agreement, though Mr. Arden, after he was in bed, asked him if he had made them all fast, to which he answered, "Yes." But afterwards growing afraid when he had got to bed, lest Black Will should kill him as well as his master, he rose, shut the doors, and bolted them very fast; insomuch, that when Black Will came thither, and could find no entrance, he returned in great fury, that he should be so disappointed, and in that mood he went next day to Green, swearing and staring like a madman, and with many oaths and execrations

threatened to kill Arden's man first wherever he met him. "Nay," said Green, "pray forbear that, let me first know the reason why the doors were shut."

Green having found out Arden's man, and expostulated the matter with him about his not leaving the doors open, according to his promise, Michael, who had framed his answer before, said, "Marry, I will tell you the reason : my master last night did that which I never found him to do before ; for, after I was in bed, he got up himself and shut the doors, and chid me severely in the morning for my carelessness in leaving them open." This pacified Green and Black Will. Now Arden having done his business in London, and being ready to return home, his man went to Green and informed him his master would go down that night : Upon this they agreed, that Black Will should kill him on Rainham-down. When Mr. Arden had got to Rochester, his man growing apprehensive that Black Will would murder him as well as his master, he pricked his horse on purpose, and made him go lame, so that he might protract the time and stay behind. His master observing the lameness of his horse, and asking him the reason of it, Michael said "He did not know."—"Well," quoth his master, "when we come at the smith's forge, which is between Rochester and the foot of the hill over against Chatham, let him take off his shoe and search, and then come after me." So that his master rode on ; but before he came to the place where Black Will lay in wait for him, he was overtaken by several gentlemen of his acquaintance, so that the assassin failed here also to accomplish his bloody design.

After Mr. Arden had got home, he sent his man to the Isle of Sheppey, to Sir Thomas Cheney, then lord-warden of the Cinque-ports, about some business, by whom Sir Thomas sent a letter back to his master ; but when he came home, his good mistress took and concealed the letter, and ordered the fellow to tell his master that he had brought a letter for him from Sir Thomas Cheney, but that he had unfortunately lost it, and added, withal, that he thought it would be his best way to go in the morning himself to Sir Thomas's, because he knew nothing of the contents of it. Having resolved to do so, he ordered his man to be up betimes in the morning. In the meanwhile Black Will, and one George Shakebag, his companion, were, by Green's appointment, concealed in a storehouse of Sir Anthony Auchers, at Preston, to which place Mrs. Arden went to see him, who brought and sent him victuals and drink several times. He was charged very strictly to be up early in the morning, to waylay Mr. Arden in a broom-close, between Feversham and the Ferry,

and there to murder him. Now Black Will was up in the morning betime, but missing his way, he tarried in a wrong place.

Arden and his man, early in the morning, riding towards Shorland, where Sir Thomas Cheney lay, when they were come near the broom-close, Michael, who was ever afraid that Black Will would murder him with his master, pretended he had lost his money-purse. "Why," said his master, "thou foolish fellow, couldst thou take no more care of thy purse? How much was there in it?" "Three pounds," said he. "Go back, you fool," quoth his master, "and look for it; it is so early that there is nobody yet stirring, thou mayst be sure to find it, and so make haste and overtake me at the Ferry. But Arden nevertheless escaped this time, by reason of the mistake of Black Will, who thought he was sure of him in his return home: but whether some of the lord-warden's servants attended him back to Feversham, or that he considered it was too late for him to go through the broom-close, and so took another way, Black Will once more failed to execute his designs.

St. Valentine's day being near, the gang thought it a proper time to perpetrate their devices; Mosbie intended to pick some quarrel or other with Arden at the fair, and so fight with him, saying, he could not find in his heart to murder a gentleman in such a manner as his wife would have it: though they had made mutual promises to each other, and had thereupon received the sacrament at London openly together. But this project of quarrelling with Mr. Arden would not do, for though he had been often before and was then also highly provoked by Mosbie, he would not fight. Mosbie had a sister, who lived in a tenement of Arden's near his house in Feversham, so that Black Will, on the eve of the fair, was sent for to come thither. Green was the man that brought him, and met Mrs. Arden accompanied with Michael her man and one of her maids; there were also present Mosbie and George Shakebag, and here the plot was laid to murder Arden in the manner they afterwards did.

Mosbie, indeed, at first would not consent to so base and cowardly an act, but flung away in a fury, and went up Abbey-street towards the Flower-de-Luce, the house of Adam Foule, whither he often resorted, but before he got thither, he was overtaken by a messenger sent after him by Mrs. Arden, importuning him, by all means, to return, which he did accordingly: and then she fell down upon her knees before him, and pressed him to go through with the business if he had any manner of love for her, and, as she had several times told him, he might be assured there

was nobody that would be concerned at his death, or make any search after them that dispatched him.

The importunity of the woman at length prevailing, he was brought to a compliance with the project, and thereupon Black Will was conveyed into Mr. Arden's House, and hid in a closet at the end of the parlour, before which they had sent all the servants out upon some pretence or other, except those who were privy and consenting to the villainous design. Mosbie went and stood at the door in a silk night-gown tied about him, between the hours of six and seven at night ; soon after which Arden, who had been at a neighbour's house called Dump-king, and had cleared some accounts that were between them, went home, and finding Mosbie at the door, asked him " If it was not supper-time ? "—" I think not," said he ; " I believe it is not yet ready."—" Then," quoth Mr. Arden, " let us in the meantime go and play a game at tables," and so going directly into the parlour through the hall, where his wife was walking, Mr. Arden said to her, " How now, Mrs Alice ? " but she made him little or no answer. In the meantime the wicket-door of the entry was chained by somebody, and when they had got into the parlour, Mosbie sat down on the bench, facing the closet wherein Black Will was hid ; Michael, Arden's man, stood behind his master, with a candle in his hand, to shadow Black Will, that his master might by no means perceive him come out of the closet. In their play, Mosbie said (and that was the signal for Black Will to come out), " Now, sir, I can take you, if I please."—" Take me !" said Arden ; " which way ? " With that Black Will rushed out of the closet, and threw a towel about his neck, to stop his breath and strangle him ; then Mosbie, having a pressing-iron, weighing fourteen pounds, at his girdle, struck him so on the head with it that he knocked him down, upon which he gave a loud groan, which made them believe he was killed.

From the parlour they carried him into the counting-house, where, as they were about to lay him down, the pangs of death came upon him ; and groaning in a most grievous manner, he extended himself, and Black Will giving him a terrible gash in the face, slew him outright ; then he laid him along, took his money out of his pocket, and the rings off his fingers, and, coming out of the counting-house, said, " The business is over : give me my money." Upon which Mrs. Arden gave him ten pounds, and then he went to Green's, borrowed a horse of him, and rode away.

After Black Will was gone, Mrs. Arden went into the counting-house,



and with a knife stuck the corpse seven or eight times in the breast ; then they cleaned the parlour, wiped away the blood with a cloth, and strewed the rushes which had been disordered during the struggle. The cloth and the bloody knife wherewith she had wounded her husband they threw into a tub by the well's side, where they were afterwards both found. This done, she sent for two Londoners then at Feversham to come to supper, to which they had been invited before the horrid murder was committed. They were grocers by trade, and their names were Prune and Cole. When they came, she said, " I wonder where Mr Arden is ! He will not stay long. Come, let us sit down,—he will be quickly with us." Then Mosbie's sister was sent for, and sat down with them, and they were all very merry.

When supper was over, Mrs. Arden made her daughter play on the virginals, and they danced, and she amongst them, frequently saying, " I wonder Mr Arden stays so long ; come, let us sit down,—he will surely soon be with us. Let us play a game at tables." But the Londoners said, " They must go to their lodgings, or else they should be locked out," and so took their leave of the company, and departed. As soon as they were gone, the servants, who were not privy to the murder, were sent into the town, some to look for their master, and others upon other errands ; then Michael, a maid, Mosbie's sister, and one of Mrs. Arden's own daughters, took the dead body, and carried it out into a field adjoining to the churchyard, and to his own garden-wall, through which he went to church. In the meantime it began to snow, and when they came to the garden-door they had forgot the key, so that one of them was sent to fetch it. It was brought at last and the door being unlocked, they conveyed the corpse into the field, about ten paces from the door of that garden, and laid it down on its back, in its night-gown and slippers, between one of which and the foot stuck a long rush or two.

Having by this management effectually secured themselves, as they imagined, from all manner of discovery, they returned the same way into the house ; the doors were opened, and the servants which had been sent into the town being come back, it was by this time grown very late ; however, the woman sent her people out again in search for their master, directing them to go to such places where he mostly frequented, but they could hear no manner of tidings of him ; then she began to exclaim, and wept like a crocodile. This brought some of the neighbours in, who found her very sorrowful, and lamenting her case, that she could not find out what was become of her husband. At last, the mayor of the town and

others went upon search for him. Here we are to observe that the fair was wont to be kept partly in the town, and partly in the abbey, but Arden procured it to be wholly kept in the abbey-ground, of which he had made a purchase, and, by this means, being like to have all the benefit of it, to the prejudice of the town and inhabitants, he was bitterly cursed for it. After they had searched other places up and down, they came at length to the ground where the dead body was laid, where Prune, the London grocer above-mentioned, happening to spy it first, called to the rest of the company, who, narrowly viewing the same, found it to be the corpse of Arden, and how it was wounded. They found rushes sticking in his slippers, and found some footsteps of people in the snow, between the place where he lay and the garden door.

This causing suspicion, the mayor ordered everybody to stand still, and then appointed some of the company to go about to the other side of the house and get in that way, and so through into the garden towards the place, where, finding the prints of people's feet all along before them in the snow, it appeared very plain that he was conveyed that way, through the garden into the place where they had laid him.

The mayor and the company hereupon went into the house, and being no strangers to the ill-conduct of Mrs. Arden, they very strictly examined her about her husband's murder. She defied them, and said, "I would have you to know I am no such woman." But they having found some of his hair and blood near the house, in the way he was carried out, as also the bloody knife she had thrust into his body, and the cloth wherewith the murderers had wiped off the blood spilt in the parlour, these things were urged so home that she confessed the murder, and, upon beholding her husband's blood, cried out, "Oh ! the blood of God help me, for this blood I have shed." She then discovered her guilty associates.

Mrs. Arden, her daughter, Michael, and the maid, were seized and sent to prison ; then the mayor, and the rest that attended him, went to the Flower-de-Luce, where they found Mosbie in bed. They soon discovered some of the murdered person's blood upon his stockings and purse, and when he asked them what they meant by coming in that manner, they said, "You may easily see the reason ;" and, shewing him the blood on his purse and hose, "these are our evidences." He thereupon confessed the fact, and was committed to prison, as well as the rest, except Green, Black Will, and the painter, which last was never heard of again.

Some time after, in 1551, the assizes were held at Feversham, where

all the prisoners were arraigned and condemned. There are no parts extant that we can possibly meet with of the formality of their trials; the confession they had made of the cruel fact could not admit much of it; only there was one unhappy circumstance which attended it, that an innocent man should suffer with the guilty; for Mrs. Arden accused Bradshaw, upon the account of the letter sent by Green from Gravesend about Black Will, as before related. All the business was, that by the description Bradshaw gave of Black Will's qualities, he judged him to be a proper instrument for the perpetration of the intended murder, to which, as Green some years after, at his death, declared he was no way privy. Nevertheless, the man, upon Mrs. Arden's accusation, was presently taken up and indicted as a procurer of Black Will to murder Mr. Arden. The man made all the defence he could for his life, and, desiring to see the condemned persons, he asked if they knew him, or ever had any conversation with him, and they all said no. Then the letter was produced and read. Here the prisoner told the court the very truth of the matter, and upon what occasion he had told Green what he said of Black Will, but it availed him nothing; condemned he was, and suffered death for a murder he had no manner of knowledge of, and which he denied to the last.

As for the real criminals, they were executed in several places; for Michael, Mr. Arden's man, was hanged in chains at Feversham, and one of the maid-servants was burned there (her crime being petty treason, then punishable by fire in a woman). She most bitterly lamented her condition, and loudly exclaiming against her mistress, who had brought her to that deplorable end, for which she would never forgive her. Mosbie and his sister were hanged in Smithfield, at London. As for Mrs. Arden, the founder of all the mischief, she, also, as a petty traitress, was burnt at Canterbury. Green returned some years after, was apprehended, tried, condemned, and hanged in chains, in the highway between Ospringe and Boughton, over against Feversham; but, before his death, he proclaimed the innocence of Bradshaw, though it was then too late. Black Will was burnt on a scaffold, at Flushing, in Zeeland. Adam Foule, who lived at the flower-de-Luce in Feversham, was brought into trouble about this unhappy affair; he was carried up to London with his legs tied under the horse, and committed to the Marshalsea. The chief ground for this was Mosbie's saying that had it not been for Adam Foule, he had not been brought into that trouble, meaning the silver dice he had brought for a token from Mrs. Arden to him; but when the matter was thoroughly searched into, and that Mosbie cleared him of any manner of privacy to the murder he was at length discharged.

## CAPTAIN HIND, THE HIGHWAYMAN CAVALIER.

**"It is an honourable kind of thievery."—SHAKESPEARE.**

THE Civil War between Charles I. and his parliament had indeed unhinged society. Men uncouth and illiterate, came from the very dregs of the people to be leaders among the roundheads, either as saints or soldiers, or as both. Fanaticism supplied the place of knowledge, and party spirit gave courage and conduct. The cause of the parliament opened to the lower classes, a course of earthly and apparently heavenly glory, which was irresistible. No wonder, therefore, that they almost to a man, ranged themselves against the king. The royal ranks, feudal in their nature, composed of nobles, gentlemen, and retainers, had but little of this plebeian support. Yet here and there, the very failings of humanity brought soldiers to the royal standard, though with vices widely differing from fanaticism. The spendthrift and the gambler, however humble their position, or sinful their ways, had a dash of adventurous spirit which made them mightily pleased with the more latitudinarian side. They readily forsook their evil courses, and became cavaliers; and acquired in some measure the semblance of gentlemen from association. Among these little reputable followers of majesty, there was, perhaps, no one of more strange character, than the personage who forms the subject of this relation. Captain James Hind was literally at the same time a robber and a cavalier, a stanch loyalist and a breaker of the law. In a former age, Robin Hood had presented an instance of an outlaw faithful to his king, and hostile to his king's enemies, but Robin was originally a noble himself, and he had an army of the best bowmen in England at his beck. Hind fought singly, or with but one companion, after the wont of a common highwayman, and yet for years he levied toll on the foes of his prince. He was a man of obscure birth, and it is his frequent contact either as friend or foe,

with the high and mighty of his time, that merits for him a record here. His early history is briefly told. The son of a respectable saddler of Chipping Norton, in Oxfordshire, where he was born, Hind ran through the usual career of youthful dissipation, and after spending his all, and spoiling his prospects, betook himself at last to the road, a trade at that time even more conspicuous, and less odious or hazardous, than in the palmy days of the mounted Turpins of a century later. The great singularity of Hind's course of conduct was that he levied war upon roundheads alone, and left all whom he knew to be cavaliers unscathed. Some of the Captain's adventures, as given in the chronicles of the period, are very amusing. One of his attempts was made upon no less a person than Oliver Cromwell himself. It is thus recorded.

About the time that the murder of King Charles I. was perpetrated by the fanatics of that time, two adventurers, Hind and one Thomas Allen joined on the road. One part of their engagement together was never to spare any of the regicides that came in their way. It was not long before they met the grand usurper Cromwell, as he was coming from Huntingdon, the place of his nativity, to London. Oliver had no less than seven men in his train, who all came immediately upon their stopping the coach, and overpowered the two highwaymen ; so that Allen was taken on the spot, and soon after executed, and it was with a great deal of difficulty that Hind made his escape. The Captain rode so hard to get out of danger after this adventure with Cromwell, that he killed his horse, and he had not at that time money enough to buy another. He resolved, therefore, to procure one as soon as possible, and to this purpose tramped along the road on foot. It was not long before he saw a horse tied to a hedge with a brace of pistols before him ; and looking round, he observed, near at hand, a gentleman dismounted. " This is my horse," says the captain, and immediately vaults into the saddle. The gentleman calling to him, and telling him that the horse was his, " Sir," says Hind, " you may think yourself well off that I have left you all the money in your pockets to buy another, which you had best lay out before I meet you again, lest you should be worse used."

His most famous encounters, however, were with Hugh Peters and President Bradshaw. They are thus related.

Captain Hind met the celebrated regicide Hugh Peters, in Enfield Chase, and commanded him to deliver his money. Hugh, who had his share of confidence, began to lay about him with texts of scripture, and to cudgel the bold robber, with the eighth commandment. " It is written

in the law," says he, "that 'Thou shalt not steal.' And furthermore Solomon, who was surely a very wise man, speaketh in this manner: 'Rob not the poor, because he is poor.'" Hind was willing to answer the puritan in his own strain; and for that end, began to rub up his memory for some of the scraps of the Bible which he had learnt by heart in his minority. "Verily," said Hind, "if thou hadst regarded the Divine precepts as thou oughtest to have done, thou wouldest not have wrested them to such an abominable and wicked sense as thou didst the words of the prophet, when he saith, 'Bind their kings with chains, and their nobles with fetters of iron.' Didst thou not, thou detestable hypocrite, endeavour from these words to aggravate the misfortunes of thy royal master, whom thy republican party unjustly murdered before the door of his own palace?" Here Hugh Peters began to extenuate that proceeding, and to allege other parts of scripture in his defence, and said that thieving was very unlawful. "Pray, Sir," replied Hind, "make no reflections on my profession: for Solomon plainly says, 'Do not despise a thief;' but it is to little purpose for us to dispute. The substance of what I have to say, is this, deliver thy money presently, or else I shall send thee out of the world to thy master in an instant."

These words of the captain frightened the old presbyterian in such a manner, that he gave him thirty broad pieces of gold, and they then parted. But Hind was not thoroughly satisfied with letting so notorious an enemy to the royal cause depart in so easy a manner. He, therefore, rode after him, full speed, and overtaking him, spoke as follows:—"Sir, now I think of it, I am convinced that this misfortune has happened to you, because you did not obey the words of the scripture, which say expressly, provide neither gold, nor silver, nor brass in your purses for your journey. Whereas it is evident that you had provided a pretty deal of gold; however, as it is now in my power to make you fulfil another command, I would by no means slip the opportunity—therefore, pray give me your cloak." Peters was so surprised, that he neither stood to dispute, nor to examine what was the drift of Hind's demand; but Hind soon let him understand his meaning, when he added, "You know, sir, our Saviour has commanded, that if any man take away thy cloak, thou must not refuse thy coat also; therefore I cannot suppose you will act in direct contradiction to such express direction, especially now you cannot pretend you have forgotten it, because I have reminded you of your duty." The preacher shrugged his shoulders for some time before he proceeded to uncase them; but Hind told him his delay would do him no service;

for he would be punctually obeyed, because he was sure what he requested was consonant to the scripture : accordingly Hugh Peters delivered his coat, and Hind carried all off.

Next Sunday, when Hugh came to preach, he chose an invective against theft for the subject of his sermon, and took his text in the Canticles, chap. v. verse 3. ' I have put off my coat, how shall I put it on.' An honest cavalier who was present, and knew the occasion of his choosing those words, cried out aloud, " Upon my word, sir, I believe there is nobody can tell you, unless Captain Hind was here ! " which ready answer to Hugh Peters' scriptural question, put the congregation into such an excessive fit of laughter, that the fanatic parson was ashamed of himself, and descended from his box, without proceeding any further in his harangue.

It has been observed before, that Hind was a professed enemy to all the regicides, and, indeed, fortune was so favourable to his desires, as to put one or other of them often into his power.

He met one day with Sergeant Bradshaw, who had some time before sat as judge upon his lawful sovereign, and passed sentence of death upon majesty. The place where this rencontre happened, was upon the road between Sherbourn and Shaftesbury, in Dorsetshire. Hind rode up to the coach side, and demanded the sergeant's money ; who, supposing his name would carry terror with it, told him who he was. Quoth Hind, " I fear neither you, nor any king-killing vagabond alive. I have now as much power over you, as you lately had over the king, and I should do God and my country good service, if I made the same use of it ; but live, villain, to suffer the pangs of thine own conscience, till justice shall lay her iron hand upon thee, and require an answer for thy crimes, in a way more proper for such a monster, who art unworthy to die by any hands but those of the common hangman, and at any other place than Tyburn. Nevertheless, although I spare thy life as a regicide, be assured, that unless thou deliverest thy money immediately, thou shalt die for thy obstinacy."

Bradshaw began to be sensible that the case was not now with him, as it had been when he sat at Westminster Hall, attended with the whole strength of the Parliament. He put his hand into his pocket and pulled out about forty shillings in silver, which he presented to the captain, who swore he would that minute shoot him through the heart, if he did not find coin of another species. The sergeant at last gave the captain a purse full of Jacobuses.



With that he shot all the six horses which were in the sergeant's coach and then rode off in pursuit of another booty.

The following adventure displays the cavalier robber in a very gallant light.

Hind met a coach on the road between Petersfield and Portsmouth, filled with gentlewomen : he went up to them in a polite manner, and told them that he was a patron of the fair sex, and that it was purely to win the favour of a hard-hearted mistress, that he travelled the country : "but ladies," added he, "I am reduced to the necessity of asking relief, having nothing to carry me on my intended prosecution of adventures." The young ladies, who most of them read romances, could not help imagining they had met with some Quixote, or Amadis de Gaul, who was saluting them in the strain of knight errantry ; "Sir knight," said one of the pleasantest among them, "we heartily commiserate your condition, and are very much troubled that we cannot contribute towards your support ; but we have nothing about us but a sacred depositum, which the laws of your order will not suffer you to violate." Hind was pleased to think he had met with such agreeable gentlewomen, and, for the sake of the jest could freely have let them pass unmolested, if his necessities at this time had not been very pressing. "May I, bright ladies, be favoured with the knowledge of what this sacred depositum, which you speak of, is, that so I may employ my utmost abilities in its defence, as the laws of knight-errantry require ?" The lady who spoke before, and who suspected the least of any one in company, told him that the depositum she had spoken of, was 3000*l.* the portion of one of the company, who was going to bestow it upon the knight who had won her good will by his many past services. "My humble duty be presented to the knight," said he, "and be pleased to tell him, that my name is Captain Hind, that out of mere necessity, I have made bold to borrow part of what, for his sake, I wish were twice as much ; that I promise to expend the sum, in defence of injured lovers, and the support of gentlemen who profess knight-errantry." At the name of Captain Hind, they were sufficiently startled, there being nobody then living in England who had not heard of him. Hind however bade them not be affrighted, for he would not do them the least hurt and desired no more than one thousand pounds out of the three. This the ladies very thankfully gave in an instant (for the money was tied up in separate bags) and the captain wished them all a good journey, and much joy to the bride.

Hind has been often celebrated for his generosity to all sorts of people ;



more especially for his kindness to the poor, which it is reported was so extraordinary, that he never injured the property of any person, who had not a complete share of riches. One instance, instead of a great many which could be produced, will sufficiently confirm the general opinion of his tenderness for those that were needy.

At a time when he was out of cash (as he frequently was, by reason of his extravagance) and had been upon the watch a pretty while, without seeing any worth his notice, he at last espied an old man jogging along the road upon an ass. He rides up to meet him, and asks him very courteously where he was going; "to the market," said the old man, "at Wantage, to buy me a cow, that I may have some milk for my children." "How many children," quoth Hind, "may you have?" the old man answered ten. "And how much do you think to give for a cow?" said Hind. "I have but forty shillings, master, and that I have been saving together these two years," says the poor wretch. Hind's heart ached for the poor man's condition, at the same time that he could not help admiring his simplicity; but being in so great a strait as we have intimated, he thought of an expedient, which would both serve him and the old man too. "Father," said he, "the money you have got about you, I must have at this time, but I will not wrong your children of their milk. My name is Hind, and if you will give me your forty shillings quietly, and meet me again this day s'ennight at this place, I promise to make the sum double. Only be cautious that you never mention a word of the matter to any body between this and that." At the day appointed the old man came, and Hind was as good as his word, bidding him buy two cows instead of one, and adding twenty shillings to the sum promised, that he might purchase the best in the market.

Never was highwayman more careful than Hind to avoid bloodshed, yet we have one instance in his life, that proves how hard it is for a man to engage in such occupation, without being exposed to a sort of wretched necessity some time or other, to take away the life of another man, in order to preserve his own. In such case, the argument of self-defence can be of no service to extenuate the crime, because he is in arms against the pursuit of justice only; so that a highwayman, who kills another man, upon whatever pretence, is as actually guilty of murder, as a man who destroys another in cold blood, without being able to give a reason for his so doing.

Hind had one morning committed several robberies in and about Maidenhead Thicket, and among others, had stopped Colonel Harrison, a

celebrated regicide, in his coach and six, and taken from him seventy odd pounds. The colonel immediately procured a hue-and-cry for taking him, which was come into that country before the captain was aware of it. However, he heard at a house of intelligence, which he always had upon every road he used, of the danger he was in ; and thereupon he instantly thought of making his escape, by riding as fast as he could from the pursuers, till he could find some safer way of concealing himself.

In this condition, the Captain was apprehensive of every man he saw. He had got no farther than a place called Knole-Hill, which is but a little way off the thicket, before he heard a man riding behind him full speed. It was a gentleman's servant endeavouring to overtake his master who was gone before, with something that he had forgot. Hind, just now thought of nothing but his own preservation, and therefore resolved either to ride off, or fire at the man, who he concluded was pursuing him. As the other horse was fresh, and Hind had pretty well tired his, he soon perceived the man got ground of him, upon which he pulled out a pistol, and just as the unfortunate countryman was at his horse's heels, he turned about and shot him through the head, so that he fell down dead on the spot. The Captain, after this act, got entirely off ; but it was for this that he was afterwards condemned at Reading.

So much for Hind the robber : but as we have said he was Hind the cavalier also. He was among those who fought for their king on the field of Worcester. This earned for him the honor of dying for high treason, and not as a common felon. After the battle was over, Hind had the fortune to escape ; and came to London, where he lodged with one Mr. Denzie, a barber, opposite St. Dunstan's Church, in Fleet Street, and went by the name of Brown. But he was discovered by an intimate acquaintance. As soon as he was apprehended, he was carried before the Speaker of the House of Commons, who then lived in Chancery-lane, and after a long examination was committed to Newgate, and loaded with irons. He was conveyed to prison by one Captain Compton, under a strong guard ; and the warrant for his commitment commanded that he should be kept in close confinement, and that nobody should be admitted to see him without orders.

On Friday the 12th of December, 1651, Captain James Hind was brought to the bar of the Sessions House in the Old Bailey, and indicted for several crimes, but nothing being proved against him that could reach his life, he was conveyed in a coach from Newgate to Reading in Berkshire, where on the 1st of March, 1652, he was arraigned before Mr.

Justice Peter Warburton, of the Upper Bench, for killing one George Sympson, at Knole, a small village in that county. The evidence here was very plain against him, and he was found guilty of wilful murder; but an act of oblivion being issued out the next day, to forgive all former offences but those against the state, he could not be hanged for this. He was therefore removed pursuant to an order of council by habeas corpus to Worcester jail. At the beginning of September, 1652, he was condemned for high treason, and on the 24th of the same month, he was drawn, hanged, and quartered, in pursuance of the sentence, being thirty-four years of age. At the place of execution, he declared that most of the robberies which he had ever committed, were upon the republican party, of whose principles he professed he always had an utter abhorrence. He added, that nothing troubled him so much, as to die before he saw his royal master established on his throne, from which he was most unjustly and illegally excluded by a rebellious and disloyal crew, who deserved hanging more than he himself. After he was executed, his head was set upon the bridge gate, over the river Severn, from whence it was privately taken down, and buried within a week afterwards.

The following is a ballad by a poet of the time to the memory of this famous Captain Hind.

## I.

WHENEVER death attacks a throne,  
Nature thro' all her parts must groan,  
The mighty monarch to bemoan.

## II.

He must be wise, and just, and good  
Tho' nor the state he understood,  
Nor ever spar'd a subject's blood.

## III.

And shall no friendly poet find,  
A monumental verse for Hind?  
In fortune less, as great in mind.

## IV.

Hind made our wealth one common store;  
He robb'd the rich to feed the poor;  
What did immortal Cæsar more?

## V.

Nay, 'twere not difficult to prove,  
That meaner views did Cæsar move;  
His was ambition, Hind's was love.

## VI.

Our English hero sought no crown,  
Nor that more pleasing bait, renown :  
But just to keep off fortune's frown.

## VII.

Yet when his country's cause invites,  
See him assert a nation's rights !  
A robber for a monarch fights !

## VIII.

If in due light his deeds we scan,  
As nature points us out the plan,  
Hind was an honourable man.

## IX.

Honour, the virtue of the brave,  
To Hind that turn of genius gave,  
Which made him scorn to be a slave.

## X.

This, had his stars conspir'd to raise,  
His natal hour, this virtue's praise  
Had shone with an uncommon blaze.

## XI.

And some new epoch had begun,  
From every action he had done,  
A city built, a battle won.

## XII.

If one's a subject, one at helm,  
'Tis the same violence, says Anselm  
To rob a house, or waste a realm.

## XIII.

Be henceforth then for ever join'd,  
The names of Cæsar and of Hind,  
In fortune different, one in mind.

## MAJOR STRANGWAYES, THE ASSASSIN.

THE narrative to which this trial relates, is terribly tragic in its every feature, even in the fate of the assassin. The details bear a strong resemblance to the recent horrors of Stanfield Hall, although the modern murderer far outdid this culprit of the period of the Commonwealth. The record of Strangwayes' crime is curious, in its giving some insight into domestic life at the time of the Protectorate.

George Strangwayes was the third son of Thomas Strangwayes, Esq. of Muston, by Anne his wife, dau. of John Bonham, Esq. of Charlton-Adam, co. Somerset, and grandson of Giles Strangwayes, Esq.\* of Muston, whose father, George Strangwayes, of Muston, was seventh son of Thomas Strangwayes, Esq. of Strangwayes Hall, co. Lancaster.

George Strangwayes was a man of stout and active body, and generally reputed of a brave and generous soul ; he was tall of stature and framed to the most masculine proportion of man. His character stood high with all who knew him, until he was hurried on by ungovernable passion to the committal of the villainy here related.

As his constitution, in his youth, qualified him peculiarly for military service, he early entered the army ; became, in the service of Charles I. a good and effective cavalier soldier ; and soon rose to the rank of major. He fought with great bravery and gallantry, during the whole course of the civil war. He also had a reputation for sagacity, and much acquired knowledge, and was, indeed, altogether a finished gentleman, just such a *preux chevalier*, as we might picture in plumed bonnet, and glittering harness, fighting by the side of royalty, at Edge Hill or Newbury.

\* Henry, a younger brother of Giles Strangwayes, of Muston, married Margaret, sister of the celebrated Edmund Ludlow.

The reverse of this fair portrait is truly sad : the subsequent events of Major Strangwayes' life blighted all his fame as a soldier.

The father of Major Strangwayes died about ten years before the catastrophe happened.

At his death the Major was left in possession of Muston farm, and his eldest sister, Mabella Strangwayes, was constituted executrix by will.

This sister, being then a maiden lady, rented her brother's farm, and stocked it at her own cost ; engaging herself to him in a bond of £350. which she borrowed towards the procuring of the stock. The Major, presuming upon her continuance of a single life, and expecting that the greatest part, if not all of her personal estate, would in time revert to him as her heir, entrusted her, not only with the bond, but also with that part of the stock, and such utensils of the house, as by his father's will probably belonged to him. His reason for doing this was, that they would be more secure by passing for hers, forasmuch as his whole estate was liable to sequestration ; by which, at that time of day, a great many thousand loyal gentleman were ruined.

His land being thus in a fair probability of being preserved from the fangs of the Commonwealth, who had then the administration of public affairs, he lived for some time very happily at his farm of Muston, with his sister, of whose prudence and discretion he had a very high opinion.

But on a sudden the scene altered, and she whom he thought sufficiently proof against all inclinations to matrimony, found a suitor in Mr. John Fussel, a gentleman well esteemed at Blandford, the place of his residence, and of much repute for his eminent abilities in matters of law.

Mabella Strangwayes contracted an engagement with Mr. Fussel, and she made it the least part of her care to disguise her sentiments concerning him : so that it was not long before her brother came to a perfect knowledge of their mutual resolutions. Whether it was that he had any former dislike to the man, or that he imagined one of that profession might injure him in his property ; or whether it was only the being disappointed in the hopes he had conceived of enjoying after his sister the whole substance of the family, is not easy to determine ; but certain it is, that he no sooner heard of a proposal of marriage between this gentleman and his sister, than he shewed himself absolutely against it, and took an opportunity of telling his sister privately, how much he disapproved her design. Mabella as freely told him how steadfast she was in her purpose ; upon which he broke out into most violent ex-

pressions of passion, affirming with bitter imprecations, that if ever she married Mr. Fussel, he would certainly be the death of him soon afterwards.

These family quarrels soon occasioned a separation between the brother and sister ; and the rupture still increased by mutual complaints between them. She pretended, that he unjustly detained from her much of the stock of the farm, which, either by her father's will, or her own purchase, was lawfully hers ; at the same time she denied that ever she sealed the afore-mentioned bond, insinuating, that it was only a forgery of her brother's. The Major, on the other hand, cried out as loudly against his sister, accusing her with nothing less than a design to defraud him of part of his estate, besides the money due by the bond. These were the differences which first fomented a rage that was not to be quenched but by blood.

Soon after their parting, Mabella and Mr. Fussel were married, and the grievances between the brother and sister commenced a law suit ; for the prosecuting of which, as well as for the carrying on of several other causes which he was employed in, he being a man of great business, Mr. Fussel was come up to London, it being Hilary term, at the unhappy time when he lost his life, in the following manner.

Mr. Fussel lodged up one pair of stairs, at the sign of the George and Half-Moon, three doors from the Palsgrave's Head Tavern, without Temple-Bar, opposite to a pewterer's shop. He came in one evening between nine and ten, and retired to his study, which fronted the street, sitting behind a desk, with his face towards the window, the curtains being so near drawn that there was but just room enough left to discern him. In this manner he had not sat above a quarter of an hour, before two bullets shot from a carbine, struck him, the one through the forehead, and the other about his mouth ; a third bullet, or slug, stuck in the lower part of the timber of the window, and the passage, by which the two former entered, was so narrow, that little less than an inch over or under had obstructed their passage.

He dropped down upon his desk without so much as a groan ; so that his clerk, who was in the room at the same time, did not at first apprehend any thing of what was done ; till at last perceiving him lean his head, and knowing him not apt to fall asleep as he wrote, he imagined something more than ordinary was the matter. Upon this he drew near, to be satisfied, when he was suddenly struck with such horror and amazement at the unexpected sight of blood, that, for the present, he was utterly in-

capable of action. As soon as he had recollected himself, he called up some of the family, by whose assistance he discovered what an unhappy accident had bereaved him of his master. Instantly they all ran down into the street, but could see nothing that might give them the least information, everything appearing, as they conceived, more silent and still than is usual at that time of night, in the public parts of the town. Officers were sent for, and Mr. Fussel's son (for he had been married before) was acquainted with the melancholy news; who immediately made use of all the means he could think of to discover the authors of this horrid act.

Several places were searched in vain; and a barber who lodged in the same house with Mr. Fussel, was apprehended on suspicion, he having been absent at the time when the deed was perpetrated.

While they were considering what could induce anybody to such an action, young Fussel called to mind those irreconcilable quarrels which had for some time subsisted between his father and his uncle Strangwayes; and thereupon proposed the apprehending the latter to the officers, which they approved of.

They proceeded to put it in execution, and between two and three in the morning, the Major was apprehended in his bed, at his lodging, over against Ivy-bridge in the Strand, at the house of one Mr. Pym, a tailor, next door to the Black-Bull-inn, which is now Bull-Inn-court.

Being in the custody of the officers, he was had before Justice Blake, to whom he denied the fact, with an undaunted confidence. However, as there was so much room for suspicion, the justice committed him to Newgate, where remaining till next morning, he was then conveyed to the place where Mr. Fussel's body was. When he came there, he was commanded to take his dead brother-in-law by the hand, and touch his wounds before the coroner's inquest, a method mightily relied on at that time by the defenders of sympathy.

But there having been nothing discovered by this experiment, he was remanded back to prison, and the coroner's jury proceeded in their inquiry, though with little hopes of satisfaction. Several ways were propounded by the foreman, for the detection of the murderer; one of which was, that all the gunsmiths in London, and the adjacent places, should be examined what guns they had either lent or sold that day. This, in the opinion of most of the jurymen, was an impracticable task; and one Mr. Holloway, a gunsmith in the Strand, who was one of the number, told them all, that the men of his profession were so numerous, that he thought it next to impossible for them to make such an inquiry without missing



many ; that, for his own part, he had that day lent a carbine, and did not question but several of the trade did the same every day that passed. This saying of Mr. Holloway's was presently taken hold of by the foreman, who desired him, for the satisfaction of them all, to declare whom he lent the said piece to : Mr. Holloway, after some small recollection, answered, to one Mr. Thompson in Long-Acre, who had formerly been a Major in the king's army, and was now married to a daughter of Sir James Aston. Upon this, a speedy search was made after Major Thompson, who being abroad, his wife was taken into custody, and detained a prisoner till her husband should be produced, though she cleared herself from having any knowledge of borrowing, or even seeing any such thing as a gun.

Mr. Thompson was that morning gone into the country, on some urgent occasion ; but on the first news of his wife's imprisonment, he returned hastily to London, where being examined before a justice of the peace, he confessed that he had borrowed a carbine of Mr. Holloway, at the time mentioned, for the use of Major Strangways, who told him that all he intended to do with it, was to kill a deer ; and that having loaded it with a brace of bullets and a slug, he delivered it to Major Strangways, in St. Clement's Churchyard, between the hours of seven and eight at night.

This was all the certain intelligence they could get of what passed before the firing of the gun. Thus much further they learned of Major Thompson, that between the hour of ten and eleven, Major Strangways brought back the gun to his house, left it, and retired to his lodging.

These circumstances were enough to increase the suspicion of the inquisitive jury, and when they were told to Mr. Strangways, he seemed to be struck with terror, so that he continued some moments in profound silence ; afterwards he acknowledged in a very pathetic manner, that the immediate hand of God was in the affair, for nothing less could have brought about such a wonderful detection. He further owned, that the night the murder was committed, he left one at his quarters to personate him, whom he took care to introduce about seven in the evening, while the people of the house were employed in their necessary affairs, and not at leisure to take any notice of his actions. This friend, he said, walked about the chamber, so as to be heard of all the family, which occasioned them to give a wrong deposition, concerning his being at home, when he was examined before the magistrate. He added, that when the act was committed (by whom, he would never clearly confess,

though it may naturally be supposed by himself,) he returned to his lodging, found means to discharge his friend, then hastened to bed, and lay there till he was apprehended, at three in the morning.

On the 24th of February, 1657-8, Major G. Strangwayes was brought to his trial, at the session-house in the Old Bailey ; where his indictment being read, and he commanded to plead, he absolutely refused to comply with the method of the court, unless, he said, he might be permitted when he was condemned, to die in the same manner as his brother-in-law had done. If they refused this, he told them, he would continue in his contempt of the court, that he might preserve his estate, which would be forfeited on his conviction, in order to bestow it on such friends as he had most affection for, as well as to free himself from the ignominious death of a public gibbet.

Many arguments were urged by the Lord Chief Justice of the Upper Bench John Glyn, and the rest of the Court, to induce him to plead ; particularly, the great sin he committed, in refusing to submit to the ordinary course of the law, and the terror of death, which his obstinate silence would oblige them to inflict upon him. But these, and all the other motives they made use of, were ineffectual ; he still remained immoveable, refusing either to plead, or to discover who it was that fired the gun ; only affirming, both then and always afterwards till his death, that whoever did it, it was done by his direction.

The chief justice then passed upon him the terrible sentence of "*the peine forte et dure*," which awaited those who refused to plead. This barbarous punishment disgraced our code until as late as the twelfth year of the reign of George III., when it was abolished by an act which ordered the same judgment and execution to pass upon a person who refused to plead, as if he had been convicted by verdict or confession. This savoured of cruelty too, and the law was again very properly altered by the 7 and 8 G. IV., c. 28, s. 2, by which it is enacted that if a person arraigned shall stand mute of malice, or will not answer directly to the indictment the court may order the proper officer to enter a plea of "Not Guilty" on behalf of such person, and the plea so entered, shall have the same force and effect as if such person had actually pleaded the same.

But to return to Major Strangwayes. The sentence upon him was in substance that he should be put into a mean room, where no light could enter ; that he be laid upon his back ; that his arms be stretched forth with a cord, one to one side of the prison, and the other to the other side of the prison, and in like manner his legs ; that upon his body be laid as

much iron and stone as he could bear, and more; that the first day he should have three morsels of barley-bread, and the next day he should drink thrice of the water in the next channel to the prison door, but no spring or fountain water; and that should be his punishment till he died.

Thus condemned, he was remanded back to Newgate, where he was attended by several eminent and pious divines till the day of his death, namely—Dr. Wild, Dr. Warmstrey, Mr. Jenkins, Mr. Watson, and Mr. Norton.

Monday, the last day of February, was the fatal day appointed for executing the judgment passed on him, when about eleven o'clock in the forenoon, the sheriffs of London and Middlesex, accompanied by several of their officers, came to the press-yard in Newgate. After a short stay, Major Strangwayes was guarded down, clothed all in white, waistcoat, stockings, drawers, and cap, over which was cast a long mourning cloak. He was straight conducted to a dungeon, the dismal place of execution, being still attended by a few of his friends, among whom was the Rev. Dr. Warmstrey, to whom turning, he said, "Sir, will you be pleased to assist me with your prayers?" The doctor answered, "yes, Major, I come on purpose to officiate in that Christian work; the Lord strengthen your faith, and give you confidence and assurance in Jesus Christ."

After they had spent some time in their devotions, the Major addressed himself to the company in general, and with a voice something more elevated than ordinary spoke as follows:—

"I thank my God, I never had a thought in my heart to doubt the truth of the religion I profess; I die a Christian, and am assured of my interest in Christ Jesus, through whose merits I question not, but before long, my soul shall triumph over her present afflictions in an eternity of glory, being reconciled to God by the blood of my Saviour. The Lord bless you all in this world, and bring you at last to a world of blessedness, which is the reward of the elect. The Lord bless me in this last and dreadful trial. So let us all pray, Jesus, Jesus, have mercy on me!"

Having said this, he took his solemn last leave of all his lamenting friends, and prepared himself for the dreadful assault of death, which he was speedily to encounter. We spare the reader the detail of the rest: suffice it to say that a heavy weight being laid purposely on his heart, the Major died in a few minutes.

While he was under sentence, Major Strangwayes wrote the following letter to Major Dewey, a member of parliament, who had married one of his sisters:—

DEAR BROTHER,

I hope forgiveness from you and the rest of my friends, for my conscience bears me witness that I was grievously provoked by my brother-in-law's wrong. It was after he had abused me by prosecutions, and refused to fight me in single combat, that I suffered myself to be tempted to do what I did, though I intended only to have terrified, and not killed him. In a word each hath his desert ; he fell to my revenge, and I to the law. I suffer willingly, being satisfied that my crime is cancelled before the Almighty. From your dying brother,

G. STRANGWAYES.

It is said the Major had often fallen into most impetuous storms of rage at the sight of Mr. Fussel, and had offered him odds in length of weapon, to fight with him ; once in particular, he met him in Westminster-hall, when they had a cause there depending, and told him that Calais sands was a much fitter place for them, who were both cavaliers, to dispute in than that court, where most of the judges were their enemies. But Mr. Fussel not only refused that way of deciding their quarrel, but indicted him as a challenger, which added fuel to his former rage, and put him upon the dreadful manner of satisfying his wrath, for which he suffered.

Bonham Strangwayes, a descendant of this unfortunuate criminal, removed into Somersetshire, where the family became located at Charlton-Worthorn and Shapwick.

## THE CASE OF DON PANTALEON SA, THE BROTHER OF THE PORTUGUESE AMBASSADOR AT THE TIME OF THE COMMONWEALTH.

THIS extraordinary case is a grand instance of the stern and haughty justice with which Oliver Cromwell wielded the government of England. Great as were the ambition, the hypocrisy, and the crimes of the Protector, none can deny the power and the wisdom of his rule. He it was, who more than any other, first gave dignity and awe to the British name throughout the world—who made this country so mighty abroad that it was truly though quaintly said at the time, and as some suppose, by Cromwell himself, that “he would have England resemble her own lion, for when she roared all other nations should hold their breath.” This maintenance of the majesty of Britain is perhaps the only redeeming feature upon the gloomy and disfigured face of the Commonwealth. One in consequence, even now looks back with a feeling of pride to the period when this domestic incident of Don Pantaleon Sa occurred. Amidst all the cruelty, tyranny, and oppression that were perpetrated in courts in that age, the retribution exacted from this offender, and the perfect justice that was done, stand forth in bold, brilliant, and indelible relief. The most clear and concise narrative we have of the affair is that which was translated from the Latin account in Mr. Zouch’s “Tract on the Inviolability of Ambassadors.” It is as follows :

Oliver Cromwell, in the year 1653, having assumed the supreme power into his own hands, among other potentates who courted his friendship, the king of Portugal sent an ambassador to beg a peace, and to purchase it by the payment of a great sum of money. The ambassador had a very splendid equipage, and in his retinue his brother, Don Pantaleon de Sa, a knight of Malta, and a man eminent for many great actions; who out of curiosity accompanied his brother in this embassy, that he might see England. He was a gentleman of a haughty and imperious

nature, and one day being in the New Exchange in the Strand, upon a sudden accident and mistake had a quarrel with one Mr. Gerard, a relation of the Lord Gerard, afterwards Earl of Macclesfield, who had then returned some negligence and contempt to the rhodomontades of the Portuguese, and had left him sensible of receiving some affront : whereupon Don Pantaleon repaired thither again the next day, with several servants, better armed, and provided for an encounter, imagining he should there find his former adversary, who expected no such visit. But the Portuguese not distinguishing persons, and finding many gentlemen walking there and amongst the rest one Mr. Greenaway, a gentleman of Lincolns-Inn, whom he fancied like the other, he thought he was not to lose the opportunity, but entered into a new quarrel ; in which Mr. Greenaway, utterly unacquainted with what had formerly passed, and walking there accidentally, was killed with a pistol-shot, and otherwise wounded.

This unhappy accident came to pass on the 22nd of November, 1653 ; upon which the people rising from all the neighbouring parts, Don Pantaleon thought fit to make his retreat to his brother's house, caused the gates to be shut up, and put all the servants in arms to defend it against the people, who had pursued him, and now flocked thither from all quarters to apprehend those who had caused the riot, and slain the gentleman.

The ambassador knew nothing of the affair ; and looking upon himself as affronted and assaulted by a rude multitude, took care to defend his house till the government should allay the tumult. Cromwell, who was soon informed of the insolence, sent an officer with some soldiers to demand and seize upon all those who had been engaged in the action, and the ambassador came to be informed of the truth of the story, with which he was exceedingly afflicted and astonished. The officer demanded the person of his brother, who was well known, and the rest of those who were present, to be delivered up to him, without which he would break open the house, and find them wherever they were concealed.

The ambassador insisted upon the privilege that was due to his house by the law of nations, and which he would defend against any violence with his own life, and the lives of all his family : but finding the officer resolute, and that he was not strong enough for the encounter, he desired he might have so much time allowed him as to send to the Lord General ;\*

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\* Cromwell, who did not assume the office of Protector, till after the abdication, in the following month, of the parliament which he had himself constituted in the June proceeding.

which being granted, he complained of the injury which was done him, and desired an audience. Cromwell sent him word that a gentleman had been murdered, and several other persons wounded, and that justice must be satisfied ; and therefore required that all the persons concerned might be delivered into his officer's hands, without which, if he should order the soldiers to withdraw and demit the demand, the people would pull down the house, and execute justice themselves ; the event of which he would not answer for : when that was done, he should have audience, and all the satisfaction that was in his power to give him.

The ambassador desired that his brother and the rest might continue in his house, and he would be responsible and bring them forth to justice at a time which should be appointed for them : but nothing of this kind would serve, the delivery of the persons was positively insisted upon, and the people increased their cry, that they would pull down the house. Whereupon the ambassador was obliged to deliver up his brother, and the other offenders, who were all sent prisoners to Newgate.

Being thus got into fast hold, and Cromwell, desirous that an inquisition should be made for the blood of a subject, and at the same time solicitous for the privilege of an ambassador, as Don Pantaleon the prisoner was affirmed to be ; by the advice of his council, had recourse to the opinion of the most eminent lawyers, both common and civil, how such a notorious murder might be punished : but they not agreeing among themselves, he appointed the Chief Justice Rolles, and two more, as many noblemen, and three doctors of the civil law, viz., our author, Dr. Zouch, who was sent for from Oxford on purpose, Dr. William Clerk, and Dr. William Turner, to take cognizance of, and examine into this knotty affair.

Don Pantaleon, the ambassador's brother, and the other offenders of the family, making their appearance before them, Don Pantaleon, whom some took to be a colleague in the embassy, vaunted that he was the King his master's ambassador, and was not subject to any other jurisdiction whatever. And then producing the King of Portugal's letters, all that appeared by them was, that the king intended in a short time to recall his brother, and to give him a commission to negotiate his affairs in England which being not at all sufficient to entitle him to the privilege of an ambassador, all thoughts that there was any regard to be had to him on that account were laid aside ; and a resolution to have him, with the rest of them, tried for the crimes laid to their charge.

The ambassador used all imaginable instances in behalf of his brother,

when at the same time he expressed his willingness to leave the rest to the mercy of the law : but he could receive no other answer but that justice must be done, and justice was done to the full. There was a report that the then government should acquaint the King of Portugal with the misadventure ; and that he should send answer : he left the criminals entirely to be punished by our law and in our country. But since our histories are wholly silent in this respect, nothing is certain concerning it ; and perhaps the temper and haughtiness of Cromwell would not let him come into such condescension, in respect to a crown that was then buying a peace with him at a full price, and upon the humblest submission.

On the 5th of July, 1654, the persons commissioned to try the offenders were Sir Henry Blount, famous for his wit, our author Dr. Richard Zouch, Dr. William Clerk, Dr. William Turner, civilians, Mr. Lacy, &c. They sat in the Upper Bench, as they then called it, in Westminster-hall ; where the prisoners were arraigned, and pleaded Not Guilty. Don Pantaleon and an English boy, who was his servant, were convicted of murder and riot, and received sentence of death accordingly. There were three more, all Portuguese, tried at the same time, and all of them likewise convicted, condemned, and executed, according to Lord Clarendon's account, at Tyburn ; but Zouch mentions no other to have suffered than the English boy and Don Pantaleon ; who after he had endeavoured in vain to make his escape, was, on the 10th of July, beheaded on a scaffold upon Tower-hill. It is remarkable, that that unfortunate gentleman, Mr. Gerard, above mentioned, was a few hours before, in the same place, beheaded for a pretended conspiracy against Cromwell, a design to seize the Tower, and to proclaim the king ; and that Don Pantaleon's brother, the ambassador, even on the very same day, was terrified into a ready signing of the peace between the king his master, the Protector, and the Commonwealth of England.

The following extract from the chief collection of the Sommers Tracts gives a more minute detail of the actual affray.

A RELATION OF THE MUTINY ON TUESDAY THE 22<sup>nd</sup> OF NOVEMBER, 1653, IN THE NEW EXCHANGE, OF THE PORTUGAL AMBASSADOR'S FOLLOWERS, &c.

This night was a great Mutiny at the New Exchange in the Strand, such as had scarce ever been the like. The business, upon the best information that I can have from those who were present in part of the business, and have conferred with others, upon the whole, is this :



On Monday night, which was the night before, three of the Portugal Ambassador's family, whereof his brother was one, being at the New Exchange, they talking in French, spake of such discourse of transaction of some English affairs, which Col. Gerhard, Sir Gilbert Gerhard's brother, understanding the French tongue, hearing, told them very civilly, that they did not represent the stories they spake of right; whereupon one of the Portugals gave him the lie: upon that they began to jostle, and all three fell upon Col. Gerhard, and threw him down, and got upon him; but though he be but a little man, yet he threw him off that was upon him, and so was hustling with him a good while. There were some gentlemen there, but knew not who it was they so assaulted, and so never meddled with them; and yet one of the Portugals with his dagger stabbed Colonel Gerhard in the shoulder, and hurt him sore: But afterwards Mr. Anfrazer [qy. Anstruther?] spake to the Portugals, that it was not civil nor handsome for so many to fall upon one, three to one being very unequal, and endeavoured to pull one of them off, and so persuade them to cease, and thereby he came to see who it was they had assaulted; who finding it to be Colonel Gerhard, which he knew well, and seeing them still pursue their rage upon him, he drew to relieve him; and after some bustle the Portugals went away, one of them having a cut upon his cheek. And that night afterwards near twenty of their attendants came to the Exchange, and would have quarrelled with any body; and some cuffing there was by some, but not much more that night, for it was late, and they returned home.

On Tuesday night, came about fifty of the Portugals again to the new Exchange, of which number were the Ambassador's brother, and two knights of Malta, and they were led on by a Portugal in buff, whom they called Captain, one well known to some in the Exchange, and they had generally double arms, all or most part of them swords and pistols, and coats of mail or armour, some one thing, some another, to preserve their bodies from swords entering upon them.

They had also two or three coaches that brought ammunition, in which were hand-grenades, and bottles, and some little barrels of powder and bullets, and other necessaries, if occasion was. They had also some boats ready to attend them at the water-side, if occasion was for them also.

Thus they came with a resolution to fall upon every English gentleman they should find in or about the Exchange; and entering in with this equipage, the people were exceedingly frightened. For first came in the

Captain in the buff, who led them, and after him the Portugal Ambassador's brother, and the knights of Malta, and so the rest, all with drawn swords, and in so furious a posture, as if they intended to kill every body they met with that stood before them.

Hereupon the people fled into the shops in the Exchange to shelter themselves, and all that did not so they fell upon, though no man gave them the least affront, yet they pistolled and cut, and wounded many.

Mr. Greneway, a gentleman of Gray's-Inn, son to the Lady Greneway, was there with his sister, and a gentlewoman whom he was to have married, who desired them two to stand up in a shop, where he saw them safe, and they would have had him to have staid with them, but he said he would only go see what was the matter ; but he was no sooner parted from them, but immediately the word being given by the Portugal Captain in buff, which was *Safa*, which was the word when they were to fall on. Without any affront offered towards them, one of them pistolled him, and shot him in the head, and he is dead of his wounds ; and many others they have dangerously wounded. Col. Mayo had twelve upon him at once, yet drew his sword, and fought with them as long as he was able to hold a sword in his hand, which being cut, he was forced to let his sword fall, and then they cut and wounded him in many places. Mr. Thomas Howard, Mr. Carter, and divers others, were wounded passing by.

The horse at the Meuse had taken alarm before they returned, and returning home, passing by the Meuse, some of the horse moving towards them, some of them discharged pistols towards the horse, and the rest run home to the Ambassador's house ; but the horse-guards took some of them, and carried them into the Meuse, and sent word thereof to the Lord-General ; and a party of horse pursued them and beset the Ambassador's house.

And commissary General Whalley sent in to the Ambassador, acquainted him with this horrible attempt and bloody murder of his followers, and shewed him his men they had taken prisoners, and required the chief of the rest of them to be delivered into the hands of justice, which the Ambassador was loth to do. But seeing he could not baffle them, to stop the course of justice in so horrible a bloody business as that had been, he delivered up his brother and one of the knights of Malta, and some others, such as they had then information was chief, and promised to secure the rest to be forthcoming any of them when they should be demanded. After which the Ambassador made his address to the Lord General, and chiefly

for his brother ; but his Excellency told him that it did concern the public, and therefore his addresses must be to the Parliament and Council of State. It is such a horrible business that his Excellency would not meddle with him in it. The Portugals, that are in custody are prisoners at James's, and the business is under examination before the Council of State.

The following detached narrative, extracted from the candid and careful Whitelock, is somewhat more circumstantial.

Nov. 21st, 1653. A great insurrection and tumult was at the New Exchange, between the Portugal Ambassador's brother, and some of his company, and Col. Gerrard, an English gentleman, who hearing the Portugueses discoursing in French of the affairs of England, told them in French, that they did not represent those passages aright. Whereupon one of the Portugueses gave him the lye, and they all three fell upon Col. Gerrard, stabbing him in the shoulder with a dagger, but being rescued out of their hands by one Mr. Anthuser, [qy. Anstruther] they retired home, and within one hour returned with 20 more, armed with breast-plates and head pieces, but after two or three turns, not finding Mr. Anthuser, they returned home that night.

Nov. 22nd. The Portugal Ambassador's brother returned again to the New Exchange with his company, and walking there they met with Col. Mayo, whom they supposed to have been Mr. Anthuser, and shooting off a pistol as a warning, 50 Portugueses came in with drawn swords, and leaving some to keep the stairs, the rest went up with the Ambassador's brother and fell upon Col. Mayo, who gallantly defending himself, received seven dangerous wounds, and lies in a dangerous condition, and then they fell upon Mr. Greenway of Lincoln's Inn, who was walking with his sister in one hand and his mistress in the other, and pistolled him in the head, whereof he died immediately. They brought with them several jars filled with gunpowder in their coaches, stopped with wax and filled with matches, intending, as it seemed, to have done some mischief to the Exchange had they not been prevented. The Parliament Horse at the Mews taking the alarm apprehended some of the Portugueses, and the rest of them ran to the Ambassador's house, whither Col. Whaley pursued them and beset the Ambassador's house with his horse, acquainted him with the murder and insolency committed by his followers, shewed him some of them whom he had taken prisoners, and required the chief of the rest to be delivered up to justice. The Ambassador in

sisted upon his privilege as Ambassador, but seeing nothing else would satisfy, he at length delivered up his brother and one of the knights of Malta and some others, and promised to secure the rest to be forthcoming; after which the Ambassador made his address to the Lord General, and chiefly for his brother, but the General told him the business did not concern the public, and therefore his excellency's address must be to the Parliament and to the Council of State.

Nov. 23. The brother of the Portugal Ambassador and his company who committed the murder at the Exchange, were examined by the Lord Chief Justice Rolles; and the Ambassador's brother, and four others, were committed to Newgate in order to take their trial.

Dec. 13. The Portugal Ambassador's brother made an escape out of Newgate, but was retaken. The Council of State published a Declaration against the late Tumult at the New Exchange, and forbid all persons of what quality soever to do or abet the like in any public place of trade or resort, upon pain to be dealt with as disturbers of the public peace, whereof a strict account shall be taken; and all officers to perform their duty for apprehending such offenders, and to prevent the like tumultuous actions.

Jan. 8, 1654. The trial of the Portugal Ambassador's brother put off till the next sessions upon the petition of the Portugal merchants.

April 3rd. The Portugal Ambassador had audience of the Lord Protector.

May 12th. The treaty with Portugal is not yet come to any agreement. The business of his brother yet sticks. His Highness hath now ordered his trial by a special commission of oyer and terminer. The commissioners are, my Lord Rolles, Justice Atkins, Serjeant Steel, Dr. Zouch, Dr. Clerk, Dr. Turner, Dr. Blunt, Mr. Lucy, and Alderman Tichburn.

July 5th. The Portugal Ambassador's brother, and two other Portugueses were tried before commissioners of oyer and terminer in the Upper Bench. He pleaded that he was not only the Ambassador's brother, but had a commission to himself, to be Ambassador when his brother should be absent, and that by the Law of Nations he was privileged from his trial, and he demanded counsel. The point of privilege of Ambassadors by the Common Law, and by the Civil Law, and by the Law of Nations, was long debated by the Court, and the Lord Protector's Council, and the result of the court was, That by all those laws the proceedings in this case were justified. And that no council could be

allowed to the Ambassador's brother in matters of fact, but if in the proceedings of his trial he should desire counsel, as to matter in law, it should be allowed him. After much persuasion he and the rest pleaded Not Guilty, and to be tried by God and the country, and a jury was called of half English and half foreigners. Adjourned till the next day for their trial

July 6th. The Portugal Ambassador's brother was again brought before the Commissioners of oyer and terminer in the Upper Bench, and tried by a jury of six denizens and six aliens. He pleaded his ignorance in the laws of England, and desired to have counsel assigned him, but the Court told him that they were of counsel equal to him as to the Commonwealth, and upon hearing of the witnesses, the jury found the ambassador's brother and four more guilty of murder and felony. The Lord Chief Justice Rolles gave sentence against them to be hanged, and a day was appointed for execution, but by the desire of the prisoners it was respited two days.

July 8th. The Portugal Ambassador's brother was reprieved.

July 10th. The Portugal Ambassador's brother endeavoured an escape, but was prevented. The English boy, who was concerned in the murder, was hanged at Tyburn.

The Portugal Ambassador's brother was conveyed from Newgate to Tower Hill, in a coach and six horses, in mourning, with divers of his brother's retinue with him.

On the scaffold, he spake something to those who understood him in excuse of his offence, laying the blame of the quarrel and murder upon the English in that business. After a few private words and passages of devotion with his confessor, he gave him his beads and crucifix, laid his head on the block, and it was chopt off at two blows. The rest condemned for the murder were all reprieved.

The Articles of Peace were signed by the Portugal Ambassador, who thereupon went out of town.

Guthrie impressively sums up the whole affair in the following words :

—" When Colonel Whaley invested the Ambassador's house with a party of horse, the Ambassador ordered his domestics to stand to their arms, and sent to complain to Cromwell of a breach of the Law of Nations. Cromwell with great magnanimity answered, that justice must be done and that blood must be satisfied with blood. All the other foreign Am-

bassadors in and about London took a very warm concern in the matter, not being able to conceive that a man of quality, an Ambassador's brother, and knight of Malta, as Don Pantaleon was, ought to be questioned for the murder of a mechanic; for so they judged an English gentleman to be. But all remonstrances to Cromwell were ineffectual, and the Ambassador's brother, at once to the amazement and admiration of the world, was tried, condemned, and publicly executed for the murder."

So far with regard to the facts of this strange case, which are thus, and even more ramblingly given in the "State Trials." The law, however, upon the subject, which embraces the rights and privileges of Ambassadors, is there very ably detailed and elucidated.

The Colonel Gerard, mentioned above, who was one of Cromwell's victims, and was executed in 1654 for treason against the Protector, belonged to the noble cavalier family of Gerard. His cousin german was Charles Gerard, the Royalist Earl of Macclesfield. Colonel Gerard and his two brothers, his uncle Sir Gilbert, and all his kinsmen then living fought in the various battle fields for the cause of the king.

## THE TRIAL OF COLONEL TURNER AND HIS FAMILY FOR BURGLARY IN THE HOUSE OF HIS FRIEND.

THIS affair occupies a great space in the "State Trials," and in almost all other collections of old trials. Why it should do so is not now clearly evident, for the facts are not very complicated, and the details thus lengthened become somewhat prosy. The remarkable feature in the matter is that a man who lived with credit, reputation, and position in the city of London, as Colonel Turner had done for a considerable time, should at once descend so low as to become a felon and burglar, and rob and ill-treat his most intimate friend. This sudden turpitude no doubt arose from Colonel Turner's domestic extravagance, for it appeared he lived beyond his income, and affected on all occasions a grand and costly appearance—a line of conduct but too frequently mortal to honour or honesty. The trial of Colonel Turner created much sensation at the time it occurred, as is shewn not only by the long reports of it, but by its being referred to by most of the historians and chroniclers of events of that day. Pepys talks a good deal about it in his memoirs, and tells of how he and his wife went to view the Colonel's execution, with an earnestness and zest which would have done honour to the taste, or rather rivalled the shame of those modern fashionables who delight in similar sight-seeing.

Colonel Turner was a gentleman by birth and station. His father was a clergyman, who held a living near London for forty years, and was much respected for his godliness, charity, and other virtues. The Colonel's wife, who was tried with him, came of the family of the Foyles in Dorsetshire, people of wealth and distinction. The Colonel himself was a cavalier, and had fought manfully for King Charles. His first commission was as Captain of a troop of horse, which he brought at his own expense to the regiment of the Marquis of Newcastle. He shared in many

of the battles of the civil war, and was held in such esteem by Charles I., that on one occasion, when Turner was taken prisoner, the King sent three exchanges to the enemy for him. Turner was a Lieutenant-Colonel at the end of the war; and in his retirement he was courted and esteemed by a large and superior circle of friends—among them, Mr. Tryon, the rich merchant whom he plundered.

The trial of the unfortunate Colonel Turner and his family took place at the Old Bailey, before Sir Robert Hyde, Chief Justice of the Court of King's Bench, Sir Orlando Bridgman, Chief Justice of the Court of Common Pleas, and others. It lasted during three days, the 15th, 16th, and 19th January, 1663. According to a custom even to this day too often observed at the Old Bailey and elsewhere, no counsel appears to have been employed for the crown, and the prisoners had the consequently additional hardship of being directly prosecuted by the bench which was to try them.

The indictment set forth: That Colonel James Turner, John Turner, and William Turner, on the 7th day of January, in the 15th year of the king, about ten of the clock of the night-time of the same day, at the parish of St. Dionis Back-church, in the ward of Lime-street, London, the dwelling-house of one Francis Tryon, merchant, did feloniously and burglariously break and enter, and on him the said Francis Tryon, then and there being and resting, feloniously and burglariously did make an assault, and him the said Francis Tryon in corporal fear of his life feloniously and burglariously did put; and one pendant pearl set in gold, and a precious stone fixed thereunto, of the value of £150; two other pendant pearls, [and other jewels of a very considerable value] and £1023 of money, being the goods and chattels of the said Francis Tryon, did feloniously and burglariously steal, take, and carry away: and that afterwards, on the 8th day of January, in the fifteenth year aforesaid, at the parish and ward aforesaid, the said Mary Turner, wife of the said Colonel, and Ely Turner knowing the said John Turner to have committed the said felony and burglary, did receive, comfort, and maintain him, against the king's peace, his crown and dignity.

To which indictment the prisoners severally pleaded *Not Guilty*.

The prisoner, James Turner, complained to the court that the sheriffs had taken possession of his house and seized his goods.

The sheriffs said they conceived they had done nothing but what was customary: that having heard the prisoner was committed for felony and burglary, and none but children being in the house, they thought it



for his good to secure his estate in case he should be acquitted, and for the king's benefit if he should be convicted, that so the goods might not be embezzled; and therefore they had caused an inventory to be made, but they had dispossessed nobody. They had indeed left a servant or two in the house, but they had offered the prisoner to leave the goods with any friend of his that would undertake they should be forthcoming if he was convicted.

The Lord Chief Justice Hyde said, that the goods of a man accused of felony were not forfeited till conviction, and that the prisoner ought to have them to live upon; but on the other hand, it was but prudent and agreeable to law to take care the goods be not embezzled, because on a conviction they were forfeited to the king, and therefore the sheriffs had done no more than they ought to do, to see that the goods were not taken away; he might have what he would for his present supply, and if any one would give security they should be forthcoming, they might have the keeping of them.

Then the prisoner said he had several papers in his house that were necessary for his defence, and desired he might be permitted to go and fetch them; but the court said they could not give him leave. He was in the sheriff's custody, who was answerable for him. He desired then that one of his sons might go, but was told they were indicted with him, but if the sheriff would send one with them, he might. The prisoner desired he might have the process of the court to bring in his witnesses.

The Lord Chief Justice Hyde answered, they could grant no precept to bring them in; the court could not compel them to come in.\*

Then he desired that the prosecutor himself might be in court; but the Lord Chief Justice said they could not compel him, if he would forfeit his recognizance. After which the prisoners were remanded to prison.

The 16th January, 1663, the prisoners were again brought to the bar, and a jury were sworn and charged with them, and the king's witnesses were called, and first, Sir Thomas Aleyn was sworn. He deposed,

That having heard of this robbery on Friday se'night in the morning, he went to visit Mr. Tryon in the afternoon, and he was desired to exa-

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\* This injustice to a prisoner no longer exists; for, by the 1st Anne, St. 1, c 9, he has the same power of bringing and swearing witnesses on his behalf, as the crown has with regard to witnesses for the prosecution.

mine the business ; and first, he examined Mr. Tryon's man and maid who confessed they had supped abroad at a dancing-school, and hearing one Mr. Tryon was robbed, they hastened home : That he demanded whether they used to go abroad after their master was a-bed, and the man said he had been twenty or thirty times at Colonel Turner's (the prisoner) at supper, about a year since ; but (though this proved to be false) this was the first occasion of their suspecting Colonel Turner : That the deponent then proceeded to examine the Colonel, who not denying it as a person of his spirit might be presumed to do, confirmed the deponent's suspicion. Then the deponent directed his house to be searched, but they could find nothing there : That the next morning Alderman Love came to the deponent, and informed him, if he would go into the Minories he might discover who robbed Mr. Tryon ; and that Mr. Turner had removed several hundred pounds that morning, and that Mr. Love told him he would meet a maid-servant of his at such a corner, who would shew him the way to the place ; and he did so ; and at the further end of the Minories he went into a shop, and found Colonel Turner with his hand in a chest, and there were two wallets there, one of £100 and the other of £200 ; and in a chest in the kitchen the deponent found two wallets more, whereupon the Colonel was speechless : That afterwards the deponent examined the Colonel where he had this money ; he answered, it was removed by himself, his wife, and children that morning ; that he removed it till this foolery was over ; and the Colonel said he received it of a goldsmith about fourteen days before, whose name he had forgotten : That the Colonel desired he might go to Mr. Tryon's, and they took coach, and carried him and the money to Mr. Tryon's house ; and the Colonel said Mr. Tryon should have all the rest of his money and jewels again by three o'clock that afternoon ; whereupon they let him go ; but the deponent coming to Mr. Tryon's again about four in the afternoon, understood that the Colonel was arrested ; whereupon the deponent sent the city marshal and his men to bring the Colonel to him, who when he came said he had brought all the things, if the officers had not prevented him, and pressed very hard for an hour or two, and said if he did not go, Mr. Tryon would lose the rest of his money and jewels. Then he begged he might go but to the Hoop Tavern and send for his wife ; which being granted, he sent his wife for the jewels, and the deponent directed the officers to secure her when she returned. About eleven o'clock his wife came, and then the Colonel desired to speak with Mr.

Tryon in private ; and afterwards told the deponent that Mr. Tryon's soul was pawned to him, and his to the thief's that no discovery should be made : That when the deponent examined his wife, she denied that any money went from their house that morning ; and being examined where she had the jewels, she said she knew of none ; but she had a couple of bags that she was sent for ; near Whitechapel or the Tower she said she was told a person should meet her, and ask what she did there, and she was to answer she walked up and down for something that should be given her ; and one brought her the two bags, which she delivered to her husband ; but what was in them she knew not : The Colonel said he had performed his part, and he hoped Mr. Tryon would perform his : That they run over the jewels, and there were all except one carcanet of diamonds and jewels, valued at £200, and one cat's-head eye-ring she had upon her finger, but that was delivered : The Colonel said the carcanet should be forthcoming too (it was fallen down behind a chest), and he would give Mr. Tryon his bond to pay him the remaining £600 in six months ; and pressed that there might be no prosecution, for two souls he said again were pawned for it, and desired an end of the business. But they told him the examination had been public, it was not in Mr. Tryon's power to end the matter with him, but that he and his wife must be sent to Newgate ; whereupon the Colonel answered, " How say you, Mr. Alderman ? then I had better have kept the jewels."

Ld. Ch. Just. Bridgman.—Then on Thursday the robbery was committed, on Friday he was examined, Saturday the money was removed, and that night the jewels were brought, and he was committed.

Sir Thomas Aleyn.—I have this further to add, that before he went to the Hoop Tavern, he confessed it was Mr. Tryon's money that he removed. And when I bade them secure his son at the Minories, he ran out at a back door, and leaped over a ditch, and could not be heard of till yesterday, though I sent out warrants against him.

Mr. Tryon sworn. He deposed that on Thursday night was se'night, about eleven o'clock, two men came to his bed-side, and one of them who had a lanthorn waked him, and he asking them who they were, and what their business was, they made no answer, but bound and gagged him, and used him very barbarously. That his servants it seems were out at supper that night, so when he had lain in this condition about an hour, he rolled himself off the bed, and fell and hurt himself ; however, he made a shift to get to the window, and cried out murder, thieves, &c.,

and his neighbours came in and unbound him. That he then went down to his warehouse, and found the jewels and money gone, and observed it must be somebody that was privy where he laid his jewels, as the prisoner James Turner was, and said that Turner used to frequent his house, and they were very familiar.

Mr. Tryon's man, Hill, sworn :

He deposed, that when he went out that night, he left the door double-locked, and the jewels were safe then, and that when he returned, all the best jewels were gone. That he was saying to the prisoner, that Saturday he was in custody, that if he and the maid had been at home, he supposed they should have been killed ; and the Colonel answered, they would only have bound him and the maid. And asking him further, how it was possible they could get in ? the Colonel told him, one went through the entry in the day-time, and lay there till night, and then let others in. And upon asking how he came to know it ? the Colonel said he examined them.

Hill deposed further, that about a year before, Colonel Turner would have had him got a will forged for old Mr. Tryon, he having no children ; and made himself and two more executors.

Ld. Ch. Jus. Hyde.—Did not you go to Mr. Turner's that night the robbery was ?

Hill.—No ; the maid and I went to Mr. Starkey's, and hearing there was such a robbery, I ran home in a great fright, and found the doors open, and the neighbours within.

Turner said, as to the business of getting Mr. Grainger to forge Mr. Tryon's will, it was spoken only in jest, but Hill affirmed the contrary.

Elizabeth Fry sworn :

She deposed, that about six last Saturday morning, Mrs. Turner came to her house, and called her up, and told her that a friend of hers, a merchant, was lately broke, and he had a wife and seven children, and they desired to secure their money till they had taken their oaths the money was not in the house, and that her husband and her son Ely were coming with the money, and asked the deponent if she had a spare chest. That Turner, the husband, came in and asked his wife concerning the seals, and she said the gentlewoman who owned the money had desired her to pull them off. And they offered the deponent twenty shillings for her kindness, and said the gentlewoman empowered them to give it, and bid the deponent conceal it, because the discovery would ruin the gentlewoman

and her children, and if any one questioned her about it, she should say they desired her to let some linen lie there.

Ld. Ch. Jus. Hyde.—When the money was brought, was there any discourse of eleven hundred pounds?

Fry.—To the best of my remembrance it was so. There were five wallets brought into my house, three were put into a chest in the shop, and two in the kitchen.

Mr Gurnet sworn :

He deposed that he met with Colonel Turner the Saturday after the robbery, and he said he did not doubt to make a discovery of the thieves and clear himself, and that he had already met with the jewels and £500 of the money, and the rest he should have by three o'clock in the afternoon ; and on the deponent's asking who the thieves were, he said they were friends, but that two of them being strangers, went beyond their commission in using Mr. Tryon so barbarously as they did.

Major Ralph Tasker sworn :

He deposed, that on Saturday morning, Sir Thomas Aleyn met him, and took him into the Minories with him, and two maids shewed them the house where Colonel Turner was, and they found him with his hand in a chest, and there were two buckram bags of about £200 each, and another in the kitchen ; that one whom they said was Colonel Turner's son, fled out of the house, and that Sir Thomas Aleyn pressing Colonel Turner to know whose money it was, the Colonel swore by the eternal God it was his own. And that they sent for a constable, and took coach, and carried the money and the Colonel to Mr. Tryon's, and that the Colonel and Mr. Tryon having had some discourse in private, the Colonel came out, and said, the old gentleman and I am agreed, I will trust the money no longer with you, but with the old gentleman himself.

Ld. Ch. Just. Bridgman.—Did you see the bags out of the wallets?

Sir Thomas Aleyn.—We saw one which was sealed, I think with the Bishop of Chichester's seal.

Ann Ball sworn :

She deposed that she was in bed when Mr. Turner and his wife brought the money to Fry's house. That she saw Turner and his wife come in, and when she understood they had brought money, she told Mrs. Fry they should be undone if they kept it in the house, and that thereupon Fry went and acquainted her sister, and so it came to Sir Thomas Aleyn's ears.

**Frederick Ixam sworn :**

He deposed, that he was at Mr. Tryon's on the Saturday night, and saw the bags of money taken out of the several wallets, and one of them had a seal, which was said to be like the Bishop of Chichester's, and they compared it with the seal of a letter which Mr. Tryon had received from the Bishop, and found them agree.

**Hanson, the goldsmith, sworn :**

The Bishop of Chichester's letter and the seal on the bag being shewn this witness in court, he deposed that the seals did agree ; and they were also shewn to the jury.

**Cole, a sergeant, sworn :**

He deposed, that on Saturday in the afternoon, he arrested Colonel Turner in an action of £700, at the suit of Thomas Lyon, and others, that were bail for him ; and having him at the Hoop Tavern, the constable came and charged them to assist him in taking Colonel Turner before Sir Thomas Aleyn, and that discoursing afterwards how Mr. Tryon's house could be robbed, and none of his doors broke, Colonel Turner said he had taken a man in the Minories, who had discovered how it was. That one went down into the cellar in the day-time, and lay there till the old gentleman was in bed, and then took the key from his bed-side, and let in the rest ; and Mr. Tryon's servant, saying, he supposed if the maid and he had been at home, they should have been killed, the Colonel said no, you would only have been bound.

**Ld. Ch. Jus. Hyde.**—Did he say nothing of Mr. Tryon's tooth?

**Cole.**—He said, that the fellow putting his finger in his mouth to gag him, the old gentleman bit him ; and struggling to get out his finger, he pulled out a tooth.

**Ld. Ch. Jus. Bridgman.**—What do you know, Mr. Hill, about breaking your own desk ?

**Hill.**—My desk was locked, and the key in my pocket, and I lost out of it about 45*l.* of my own money. It stood upon a table in the warehouse, and the jewels were in a drawer under a table in the counting-house.

**Ld. Ch. Jus. Bridgman.**—How did you leave Mr. Tryon's door ?

**Hill.**—Double locked, and I had the key in my pocket, and my master had another key in his chamber.

**Ld. Ch. Jus. Bridgman.**—Mr. Tryon, how was your door opened ?

**Mr. Tryon.**—They forced open the street-door with a crow of iron, and I never lock my chamber-door.

Ld. Ch. Jus. Hyde.—Were your counting-house and till where the jewels lay, locked ?

Mr. Tryon.—Yes, and the till was opened, I know not how ; my key was among a bunch of keys.

Peter Vanden-Anchor sworn.

He deposed, that being just come home, his daughter said, she heard a great cry of murder, and he ran out, and found some of the neighbours breaking open Mr. Tryon's door, and he first got into the house, and ran up to Mr. Tryon's chamber, and found him bound with a rope.

Chaplain sworn.

He deposed, that he was at Mr. Tryon's door with Mr. Vanden-Anchor and they went into the warehouse, and found the cash, &c., taken away, without breaking anything ; but that several pieces of plate were left ; that soon after Mr. Tryon's man came in, and said, he had been at Colonel Turner's at supper ; but the maid, when she came, said, they had been at one Chamberlain's, a goldsmith ; and that a little after, Colonel Turner came in, and made a great bustle. And the deponent observed, that all the doors were opened with keys, and he said they asked Mr. Tryon who bound him, and he said he thought one Christmas.

Christmas sworn.

He deposed, that about two of the clock on Friday morning, a constable came and knocked him up, and said he must go to Mr. Tryon, for he had been robbed, and that he came out to him, and they carried him to the Exchange, and from thence to the Compter ; and about ten the next morning, Colonel Turner came and asked him what Justice he would go before, and they went before Sir Thomas Adams ; and nobody charging him with anything, Sir Thomas discharged him.

Mr. Millington sworn.

He deposed that he came to Mr. Tryon's on Saturday in the evening, and Mr. Turner told him of his being arrested, and said it prevented his getting the jewels and the remainder of the money, and desired the deponent would intercede, that he might go about the jewels, and said, if he did not go presently, the thief would be gone ; and he said he was walking about Tower-hill, or White-chapel ; but the serjeants said, this was out of their liberties, and they would not go with him, but some of them on his importunity went with him to his own house, and his wife was some time in private with him behind a partition, and when they came out, he said publicly to his wife, that there was a man would be walking all alone on

Tower-hill, and bade her go thither, and he would deliver her what he told her; and about two hours after, the jewels were brought by his wife, and Mr. Turner carried them to Mr. Tryon's, and they were opened, and they found one carcanet jewel wanting, of 200*l.* value, and Mrs. Turner said the man told her it was fallen behind a chest, but did not doubt to procure it to-morrow. That Sir Thomas Aleyn, telling Turner he must commit him to Newgate, Turner said, then he had better have kept the jewels; and the remainder of the money being demanded, Turner said he would be bound for it.

Mr. Mannock sworn.

He deposed, that Colonel Turner told him in Newgate, Mr. Tryon was to give him 500*l.* to get his jewels and money again, and that he had got him 500*l.* and most of the jewels, and believed he should have had them all, if Sir Thomas Aleyn had not secured him; and he told him the five hundred pounds he delivered to Mr. Tryon, were had at his own house.

Sir Thomas Chamberlain sworn.

He deposed, that he was with Sir Thomas Aleyn at Mr. Tryon's, when the several examinations were taken. That they very much suspected Colonel Turner, he being familiar in the house, and coming often for jewels knew where everything lay. That before Mrs. Turner came in with the jewels, Sir Thomas Aleyn received a note, whereby he was assured, that Turner and his wife had been at the house in the Minories; which when they acquainted Mrs. Turner with, she swore and took on, and said, she was a false woman that said she had been there; and Colonel Turner came in and cursed and swore, and said, why do you vex and torment my wife? she is *enceinte*. That Sir Thomas Aleyn saying he must make a mittimus for him and his wife, she said to her husband, do you send me of your errands? you shall send somebody else another time, I thought it would come to this.

Sir Thomas Aleyn deposed further, that William Turner being taken and brought before him as a person of ill fame, and likely to do such a thing, and Mr. Tryon looking on him, and suspecting him to be one of them, the deponent demanded, when he saw Colonel Turner, and William Turner answered he had not seen him to speak to these three years.

William Daws sworn.

He deposed, that William Turner was at his house drinking a pot of beer last Wednesday se'night, and a neighbour came in, and told the deponent he was a dangerous fellow; and that soon after Colonel Turner came in



and paid for the beer, and William Turner and the Colonel went away together.

Rouse, servant to William Daws, sworn.

He deposed, that upon Wednesday the sixth of this instant William Turner came to their house, and said he staid for Colonel Turner; and after some time, Colonel Turner came in and paid for the beer, and they went away together.

Peter Cully sworn.

He deposed, that he was with Sir Thomas Aleyn, &c. at Mr. Tryon's and asking Colonel Turner, why the money was carried from his house to the Minories, the Colonel affirmed with an oath, that there was none carried.

Mr. Watcher sworn.

He deposed, that the last Saturday Colonel Turner said on the Exchange, that Mr. Tryon should have all his money and jewels by three that afternoon, and that if any man could say he lost six penny worth of his money or jewels, he had two fellows in custody, that should suffer for it; and asking him why the money was removed from his house to the Minories, the Colonel denied it with an oath.

Mr. Garret sworn.

He deposed, that when they were looking over the money at Mr. Tryon's, Colonel Turner said, Jack, take notice this is my money; but they compared the seal of one of the bags with the Bishop of Winchester's and found them agree.

Mr. Pilkington sworn.

He deposed, that he was with Colonel Turner at the Hoop Tavern, and that the Colonel gave them that account of their usage of Mr. Tryon, and getting into his house, as Cole the serjeant, and some of the other witnesses had already deposed.

Mr. Martin's coachman sworn.

He deposed, that about eight or nine o'clock on Thursday night, as he was driving by Mr. Tryon's, he saw four men standing by his door, and every one had a handkerchief about his neck, and a great cudgel in his hand, and they pulled their hats over their faces, which made him suspect such a business.

Mr. Tryon deposed further, that he believed William Turner was one of those who stood by his bed-side, and struck his tooth out. That at least he was very like him in face and size, and they had no vizards on.

Col. Turner said in his defence, that he and his family were in bed and asleep that night Mr. Tryon was robbed ; and that the constable coming to him, and acquainting him with the accident, he went to Mr. Tryon's who desired his assistance to find out the thieves ; and that Mr. Tryon having been like to be robbed a year before, by a gang that harboured about Tower-hill, he went thither about twelve o'clock on Friday night and there he met one Wild, whom he suspected to be one of the thieves, and charged him with it, and seized him by the collar, and Wild promised him to produce the things, if he would not prosecute him, and the Colonel promised on his salvation he would not ; and then Wild whistled, and there came another fellow, whom he sent for the money, and it was carried to the Colonel's house, and afterwards to the Minories, to induce Wild's confederates to bring the rest of the money and the jewels thither, under a pretence of sharing them. That when he was taken up, he was forced to send his wife to Tower-hill, who met Wild, and received the jewels according to appointment ; and the Colonel added many other improbable circumstances.

Ld. Ch. Just. Hyde.—You have told a long story about Wild ! that you took him by the throat, and that you were alone. What weapons had you ?

Col. Turner.—None, my lord.

Ld. Ch. Just. Hyde.—When you let him go, and he called other fellows, in such a case as this, would not they have knocked you on the head ?

Turner.—My lord, Wild had engaged his soul to me, and I had engaged mine to him.

Ld. Ch. Just. Bridgman.—Great security indeed !

Then Colonel Turner called some witnesses ; and first—

Mosely the constable.

He deposed, that he came to Mr. Tryon's house, and found him bound on Thursday night ; that soon after Mr. Tryon's man came in, and they asked him where he had been, and he said at Colonel Turner's at supper ; whereupon the deponent went to Colonel Turner's and asked where his sons were, and he said they were in bed, and desired the deponent to go up and see.

A servant of the Marquess of Dorchester called.

He deposed, that Colonel Turner's sons were at his lord's that night the robbery was, from between seven and eight, until nine o'clock.

Colonel Turner's maid called.

She deposed, that her master and his sons were at home all Thursday and Friday nights ; whereupon the court observed she would say anything, and she was set aside,

Mr. Cook was called.

He deposed, that he had known Colonel Turner these twenty years. had dealt with him for several hundred pounds, and trusted him, and found him very faithful. That he had seen jewels in his possession of the value of eight or ten thousand pounds ; and that if he had been such a person as he was accused to be, he might have broke very advantageously.

Mr Legoose deposed that the Colonel had been solicitor for him in a business, and dealt very faithfully ; though indeed he had the report of a person that lived too high.

Mr. Jefferies deposed, that he understood Mr Tryon used to trust the Colonel with jewels of a considerable value, and had a good opinion of him.

Col. Turner.—My lord, if Sir Thomas Aleyn would have let us go, we had taken the thief.

Alderman Smith.—Did not I speak to you, and advise you to let us know where the man was, and I would go myself, or any of the persons present, and you utterly refused it, and said, there were two souls pawned, and you would not discover him ?

Marshal.—He refused to let us go with his wife, and said, the thief would meet no man.

Ld. Ch. Just. Hyde.—William Turner, what have you to say !

William Turner.—I was at home. I never was at Mr. Tryon's in my life, until I was there with Sir Thomas Aleynes.

Ld. Ch. Just. Hyde.—John Turner, you are charged with being very busy with your father and mother in removing the money ; and when you had notice you would be apprehended, you ran away.

John Turner.—I did not know who was come, or whether they came to apprehend me, or no ; but the woman saying, flee for your life, I got away ; and I confess I did carry two bags from Wild upon Tower-hill to the house in the Minories, before Sir Thomas Aleyn came.

Ld. Ch. Just. Bridgman.—This is a likely story, that you should in the day time, between eight and nine in the morning meet a noted thief at Tower-ditch, to receive two bags of money.

Ld. Mayor.—How many turns did you make, when the money was carried from your father's house to the Minories ?

John Turner.—My father and I went twice ; the first time I carried 200*l*, and the next time 300*l*, as near as I can judge.

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Ld. Ch. Just. Bridgman.—William Turner, upon what occasion did you meet James Turner at the ale-house ?

William Turner.—I did not come thither to meet him : but having no money, and seeing him come by, I called him in, and I desired him to pay for my drink, and so we parted.

Then the Lord Chief Justice Hyde directed the jury ; he told them, that as to Mary Turner, though she seemed to have a hand in the business all along, yet it appearing to be by the direction of her husband, she could not be made an accessory ; and as to Ely Turner, the other accessory, he did not find any evidence affected him ; for it appeared to be John that carried the money, and not he. As to the rest he said, where several men come to rob a house, and some enter, and others stand without to prevent their being surprised, they are all guilty of the burglary.

The Lord Chief Justice Bridgman added, that if the door were not broken open, but opened by a picklock, it was nevertheless burglary ; that as to the story of meeting the thief upon Tower-hill, it ought to be rejected as a perfect romance. And admitting that one of the thieves came in at the door in the day-time, and let the others in in the night, it was nevertheless burglary in them all.

The jury having withdrawn, returned in about an hour, and brought in James Turner guilty, but acquitted the rest.

The 19th of January, 1664, sentence of death was passed upon Colonel James Turner, and he was hanged the 21st of the same month, in Leaden-hall-street, near the end of Lime-street, where Mr. Tryon lived.

Before he suffered, he confessed that he himself, William Turner, one White, a solicitor, and White's friend, committed this robbery, but that his wife and sons knew nothing of it. He restored Mr. Tryon the carcanet of rubies and diamonds that was wanting.

During his imprisonment, and at his execution, Colonel Turner appeared very courageous, though his long speeches on the scaffold led many to think that he looked for a reprieve from the king.

## THE LADY IVY'S TRIAL.

THIS case was an action tried at the bar of the Court of King's Bench, in Trinity Term, 1684, before Chief Justice Jefferies, for the recovery of a great part of Shadwell in Middlesex. The trial, one of almost interminable length, in the reports of it extant, is mainly remarkable for one circumstance, the singular detection of forgery through the ingenuity of counsel. It is to that part of the affair that the narrative here is confined. The question at issue was whether seven acres in Shadwell were part of the ancient inheritance of the Dean of St. Paul's, to whom a Mr. Neale was lessee, and so lessor of the plaintiff, Elam Mossam ; or part of Wapping marsh, that had been drained by one Vanderdelf, and after sold to parties of the name of Stepkins, under whom the Lady Ivy claimed.

To support her case, Lady Ivy (the widow of Sir Thomas Ivy) produced among many documents, two deeds of doubtful history and possession, which were overthrown by the counsel on the other side in the following manner :—

Mr. Bradbury, counsel for the plaintiff.—My lord, we have had a violent suspicion, that these deeds were forged. But we suspect it now no longer, for we have detected it, and will show as palpable, self-evident forgery upon the face of these deeds as ever was. I desire to see the deed of the 13th of November, in the 2d and 3d years of Philip and Mary, from Marcellus Hall to Roper ; and that of the 22d of December, in the same years, from Marcellus Hall to Carter, I desire to see too. Your lordship sees the use of these deeds. The one is grafted upon our lease from dean Fecknam, where it is recited that the mill is demolished, and a new one erected in another place (says their deed) ; and upon that

they set up the notion of an over-shot mill, and all the puzzling matter brought into this cause. But I dare undertake to prove them plainly forged.

Attorney General (Sir Robert Sawyer), counsel for Lady Ivy.—That is an undertaking indeed.

Mr. Bradbury.—It is an undertaking indeed to detect the defendant's artifice ; but I will venture upon it, and shall demonstrate it so evidently, that Mr. Attorney himself shall be convinced they are forged.

Attorney General.—Come on, let us see this demonstration.

Mr. Bradbury.—The deeds have brought that evidence upon their own faces, that is 1000 witnesses.

Mr. Williams (afterwards Sir William Williams, Bart., Solicitor General), another counsel for the plaintiff.—Prithee open the exception.

Mr. Bradbury.—If your lordship please to look upon them, the style of the king and queen in both runs thus : the one is, “ This indenture made the 13th day of November, in the second and third years of the reigns of our sovereign lord and lady Philip and Mary, by the grace of God, King and Queen of England, Spain, France, both Sicilies, Jerusalem, and Ireland, defenders of the faith, archdukes of Austria, dukes of Burgundy, Milan, and Brabant, counts of Haspurg, Flanders, and Tyroll.” The other is, “ This indenture made the 22d of December in the same year.” Now in November and December, second and third of Philip and Mary, it was impossible for any man in the world to draw a deed in this form that those two writings are—

Attorney General.—Is that your demonstration ?

Lord Chief Justice Jefferies.—Pray let him go on, methinks it is very ingenious.

Mr. Bradbury.—My lord, I had the hint from my lord Coke in his first Institutes ; not as to this particular style, for I know he is mistaken there, but for the detecting of forgeries in general.

Lord Chief Justice.—It is very well ; pray, go on.

Mr. Bradbury.—My lord, at that time king Philip and queen Mary were among other styles, styled king and queen of Naples, princes of Spain and Sicily ; they never were called king and queen of Spain, and both the Sicilies then ; and lastly, Burgundy was never put before Milan. Now to prove all this that I say, I have here all the records of that time, which will prove their style to be otherwise. First, we shall shew the acts of parliament of that time. The sitting began the 21st of October, in that

year, which was before their deeds, and ended the 9th December after. We shall first read the titles of the acts of parliament, and you will find them just as I have opened them. Read the statute-book.

Clerk reads. 'Acts made at a parliament begun and holden at Westminster, the 21st day of October, in the second and third years of the reign of our most gracious sovereign lord and lady Philip and Mary, by the grace of God, king and queen of England, France, Naples, Jerusalem, and Ireland, defenders of the faith, princes of Spain and Sicily, archdukes of Austria, dukes of Milan, Burgundy, and Brabant, counts of Haspurg, Flanders and Tyroll: and there continued and kept until the dissolution of the same, being the 9th day of December then next ensuing.'

Mr. Bradbury.—Here in the act made by the public council of the kingdom, the style is in the ancient manner. And your lordship observes these no small differences. Here first Spain is left out in the enumeration of the kingdoms, and so Sicily; and Naples is instead of them. In the deeds, Spain is put in before France, and the Sicilies made a kingdom too. Secondly, Here in the style of the act they are called but princes of Spain and Sicily, that in the deeds is quite left out. And then in the acts of parliament, Milan is put before Burgundy; in the deeds Burgundy before Milan. And how this great alteration of the style should come to be put in a miller's lease, is strange. We have next an account of all the fines of Hilary term, which was the next term following; for their first deeds happen to be in Michaelmas term, and then the parliament sate too. (Many of which were read.)

Mr. Bradbury.—Here are likewise the fines of the Easter-term following, which shew that still the old style continued in all the public records. And if we could as easily have brought all the enrolments of deeds, that would prove the same. (The fines of Easter-term read.)

Mr. Bradbury —Now, my lord, we shall shew when the style turned, that was in Trinity-term after. (The fines read.)

Mr. Bradbury.—But I cannot see how these deeds could be truly made at that time, when they stand single, and none like them can be shewn, except they come from the same forge that these do. I cannot believe the miller alone, or he that drew his leases for him, could so long before prophecy what manner of style should hereafter be used.

Mr. Williams.—Your lordship has heard our deed of the 10th of December, in the same year, read already: but we having here the ledger-book of the church of St. Paul's, which cannot be made for a turn, but

was written at that time ; we desire the style may be read there.—(Which was done, and bore out the detection.)

In addition to this damning proof, evidence was brought to shew that Lady Ivy had forged, or caused to be forged other deeds upon different occasions.

In summing up to the jury, Chief Justice Jefferies thus commented on the strange turn the case had taken :

“ But then they come to the last point of evidence, and that you must very narrowly observe and weigh. Say they, because you depend so much upon Carter's lease, which takes notice of such and such boundaries and also that of Roper, which you pretend to be made at such a time, these, we say, are forged. And for it they give this evidence.

“ The first part is a natural, legal, evidence, and a proper evidence in things of this nature to detect a forgery ; an evidence that we learn out of our books of law, and it is an argumentative one. If you produce deeds made in such a time, when say you, such titles were used, and such prefaces made to them in their preambles, when indeed there were no such titles used at that time, that sheweth your deeds are counterfeit and forged and not true deeds. And there is *Digitus Dei*, the finger of God in it ; that though the design be laid deep, and the contrivance sculk, yet truth and justice will appear one time or another ; and though they may put some gull upon justice for a while, yet it will in time be discovered, to the confusion and shame of the undertakers. Say they, you have taken wonderful care to have both deeds carry the same flourish at the top of each of them ; you call Philip and Mary, King and Queen of Spain, and both Sicilies ; and you put Burgundy in the ducal style, before Milan : this is the language of both deeds, but that sheweth them not to be true deeds, that carrieth forgery in the very face of it ; for Philip and Mary never came to write themselves king and queen of Spain and Sicily, till Trinity term, in the second and third years of their reigns ; whereas your deeds bear date in November before. Till Trinity term Naples was a kingdom, and they were but princes of Spain and Sicily. And besides, they used always before that time, to put Milan among the dukedoms first before Burgundy.

“ For instances and proofs of this objection, they shew you the titles of the acts of parliament in that year, in October, November, and December ; they shew you the fines levied in Hilary term and Easter term, and Trinity term ; till which term the records of the kingdom of fines and



recoveries, bore all the old style ; and so do the conveyances enrolled and not enrolled of that time. And with great bravery they challenge the defendant's counsel to shew any one conveyance or record (except those of your own making) that is otherwise. And as a further evidence they say, we have some leases entered in our books, and so not calculated for this purpose, which have no other than the old style of the king and queen.

“ And in truth this is a material evidence to prove these to be forged deeds ; and it is made the more material by this circumstance, which Mr. Attorney was pleased to mention ; and that is, the notice they had from Mr. Neale's bragging of this very objection to their deeds, and yet they should not come prepared to give it an answer. And I must deal plainly with you—that very one thing makes it an objection of very great weight and moment.

“ But still, say they, besides all this evidence we shall go a step further, and evince the likelihood that these deeds should be forged ; for your client, the defendant, is apt to forge deeds. And to prove that we produce evidence also.

“ After this long evidence, gentlemen, you have had as good an account of the substance of it, as I can by my notes and memory recollect. If any of the gentlemen that are of the counsel for the plaintiff or for the defendant, do think I have omitted anything that is material, on either side, they have free liberty to remind the court of it. You are the judges of this fact, whether this land do of right belong to the plaintiff or to the defendant : And I leave it to your consideration.”

As might be supposed, the verdict went against Lady Ivy ; the forged deeds were impounded by order of the court, and an information for the forgery (at that time a misdemeanor only) was exhibited forthwith against her ladyship, but what further came of it does not appear.

## THE MURDER OF DR. CLENCHE.

DR. Andrew Clenche was a physician of note and property, in the reign of William and Mary. The perpetrator of his strange and barbarous murder, one Henry Harrison, commonly called Captain Harrison, was originally a lawyer's clerk, and afterwards a trooper in Lord Dartmouth's Regiment: he appears also to have belonged to that class of bullies, which was so notorious in the seventeenth century, and of which we find continual mention in the plays and histories of the time. The trial of Harrison for this murder, was one of the earliest of a new era in our criminal jurisprudence. The Revolution of 1688 had not long passed, and Lord Chief Justice Sir John Holt had come upon the judgment seat, the first of that noble line of judges who were about to purify the ermine, and to redeem the reputation of our courts from the judicial horrors (especially in political matters) of preceding times. This trial, though some bad practice and worse law (since abolished) were then still in force against the prisoner, presents a visible and pleasing contrast to the criminal investigations, even non-political, of a few years antecedent, the object more clearly in view being now the investigation of truth, without oppression of the accused.

The trial of Harrison for the murder of Dr. Clenche took place at the Old Bailey the 6th April, 1692. The other judges present besides Chief Justice Holt, were, Sir Robert Atkyns, the Lord Chief Baron, and Sir Edward Nevill, a Justice of the Common Pleas, both Whig lawyers of eminence, who had been restored to the bench at the Revolution.

The indictment, which charged the prisoner, Henry Harrison (assisted by another, yet unknown), with wilful murder, concluded, in consequence of the joint rule of William and Mary, by stating that he com-

mitted the crime "against the peace of our sovereign Lord and Lady, the King and Queen now, their crown and dignity."

The prisoner having pleaded that he was "not guilty, in thought, word, nor deed," the counsel for the prosecution, John Darnell, Esq. (afterwards Sergeant Darnell), thus addressed the jury on the part of the crown.

Mr. Darnell.—May it please your lordships, and you gentlemen that are sworn : I am of counsel for the king and queen against the prisoner at the bar, who stands indicted for the murder of Dr. Andrew Clenche, which was as barbarous a murder as any that hath been committed in this age. And considering it was done in the dark, I think there will be given as clear an evidence of it against Mr. Harrison, the prisoner, as can be expected. And it was upon this occasion ; one Mrs. Vanwicke, a widow (between whom and Mr. Harrison there was a great kindness), prevailed with Dr. Clenche, to whom she was indebted £20, to lend her so much more as would make it up £120, and to take a mortgage of a house of hers in Buckingham-court, near Charing Cross, for his security ; and Mr. Harrison was present with Mrs. Vanwicke at the lending of the rest of the money, and execution of the mortgage, as he was wont to be at the management of her affairs ; but when the time came that it was to be repaid, the doctor could not get his money, and Mrs. Vanwicke having but an estate for life in the house, and having long delayed the doctor, he brought an ejectment for the recovering of the house, upon which the prisoner came to Dr. Clenche, and abused him with very scurrilous language, and his passion growing higher, he laid his hand upon his sword, and would have drawn it, and if it had not been for one Mr. Johnson, it was thought he would have killed the doctor at that time ; so that the doctor desired Mr. Johnson to take the business upon himself, and to act in his own name, he was so much afraid of him. And it will be proved further to you, that at another time the prisoner said, that Dr. Clenche was a rogue and a villain, and deserved to have his throat cut. And some time after this, Mrs. Vanwicke would have borrowed some more money of the doctor, but he refused to lend it her ; whereupon she acquainting the prisoner with it, he said, leave him to me, madam ; I'll warrant you, I'll manage him ; he is a rogue, and deserves to have his throat cut. And afterwards, about St. Thomas's day last, the prisoner went to Mrs. West the tenant, who dwelt in the house mortgaged to Dr. Clenche, and desired of Mrs.

West to have some money for Mrs. Vanwicke, and it should be discounted in part of the then next Christmas rent. But the said Mrs. West refused to pay him any, telling him, that she and her husband were forbid by Dr. Clenche and the ground landlord, to pay any more to Mrs. Vanwicke; and thereupon the prisoner expressed his further malice against the doctor, and said, he is a great rogue, and a villain, and deserves to have his throat cut, and will not die in his bed. And, gentlemen, soon after the prisoner began to put his malicious design against the doctor into execution, and the method he took was first to change his lodgings; for on the day before Christmas Eve last, he took new lodgings at one Mr. Garways, in Threadneedle Street, near the Old Exchange, attended by a foot-boy, pretending himself to be a parliament-man (M.P.), and that he was just then come out of the country, and lay in his lodgings there every night, until the first day of January following, but lay out that night and the two next nights following. And whilst he lodged at this Mr. Garway's this matter happened, which does conduce somewhat towards the discovery of this murder. One evening the prisoner being in his chamber there, and one Mrs. Jackson, the daughter of Mrs. Garway, making a fire for him, he did take out his handkerchief, and held it before the fire to dry it, which she took great notice of, because it was coarse and dirty, and not fit for his quality (as she thought), it being made of ordinary Indian stuff, like her mother's maid's apron. And, gentlemen, this very handkerchief was the same with which the murder was committed, and this Mrs. Jackson will swear it to be the same; for it is a very remarkable one, and it will be produced to you. And we shall shew you further, that on the 3rd day of January (being the day before this murder was committed), he caused a sham letter to be left for him at his lodgings at this Mr Garway's, as written from a friend of his that was sick in the country, earnestly pressing him to come quickly down to him: and we shall prove, that the same evening, he being with Mrs. Vanwicke in Woodstreet compter, did again threaten Dr. Clenche, and said that he was a rogue, and he would have his blood. And upon the fourth day of January last, he again changed his lodgings, and took new ones at one Mr. Jones's, a cane-chair maker, in St. Paul's Church-yard, and there he pretended himself to be a country gentleman, just then come out of Cumberland, and brought in a portmanteau trunk thither: and the same day he sent a letter to Mrs. Garway, where he had lodged

before, acquainting her that he was gone out of town for a week or ten days. And to give you further satisfaction, we shall prove, that upon the same fourth day of January, in the night of which this unfortunate gentleman was murdered, the prisoner was at one Mr. Robert Humston's lodgings at the Golden Key in Fleet-street, over against Fetter Lane end, at near nine of the clock at night; and being asked by Mr. Humston to stay and sup with him, he said he could not for he had been about earnest business that day, which was to be done that night, and that a gentleman stayed for him in the street, to go with him about it, and so he went away. And soon after, about nine of the clock the same night, two men standing in Fleet Street, at Fetter Lane end, called for a coach, and asked the coachman if he knew Dr. Clenche, who dwelt in Brownlow Street, in Holborn: and the coachman replied, he did know the street, but not the doctor: whereupon they went into the coach, and ordered him to drive to the end of Brownlow-street; and when they came thither, one of them called to the coachman, and bade him go to Dr. Clenche's and tell him, that two gentlemen in a coach, at the end of the street, desired him to go with them to a patient who was very sick; which the coachman did. And he found the doctor in his night-gown and slippers, and just a-going to bed; but he immediately dressed himself, and went to them into the coach. And it fell out very happily for the further discovery of this murder, that while this coach stood at the end of Brownlow-street, a young gentlewoman standing at her door near it, and fancying that while the coachman went on the errand, the gentlemen would slip out of the coach (I think they call it bilking) she watched them. And a lamp that lighted cross Holborn over against Brownlow-street end, and another about the middle of Brownlow-street, gave such a light into the coach, that she plainly saw one of the men that sat in it, and saw him look out of the coach after the coachman, and heard him swear at the coachman, because he made no more haste in going to the doctor's house: and she is very certain that the prisoner at the bar is the same person that looked out of the coach, and that did swear at the coachman, and is more confident of it from the remarkableness of his voice. For she hearing of this murder, and remembering these circumstances, she went to Newgate to see the prisoner, and hearing his voice in another room, before she saw him, she declared to the persons that were then with her, that the voice she then heard was the person's voice that she saw look out of the coach

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and that did swear at the coachman ; and afterwards when she came into the room where the prisoner was, though with several other men, she pointed to him as the person, and she hearing him then speak again, declared to the persons with her, that both by his voice, and by his countenance, she knew him to be the same man. And, my lord, after those gentlemen had gotten the doctor into the coach, one of them called to the coachman, and bade him make haste and drive them to Leadenhall-market, and when they were come within Holborn-bars, one of them called to the coachman, and bade him drive faster ; whereupon the coachman drove them very fast through Holborn to Leadenhall-market gate ; and when he came there, one of them bade him drive to the Pye without Aldgate (before which time, without doubt, the murder was committed upon the doctor, for his hat was found next morning in Holborn, near Fetter-lane end ; but the driving so long about after, is supposed to be done, lest the doctor might recover) ; and when they were come without Aldgate, one of them ordered the coachman to ask there for one Hunt, a chirurgeon, which he did, and being answered, that no such person was there, he ordered the coachman to drive back again to Leadenhall, and when they came there, one of them called the coachman, and gave him three shillings and sixpence, and bade him go into the market there to one Hunt, a poulterer, and buy them a couple of fowls, but the coachman could not find any Hunt, a poulterer ; but however he bought a couple of fowls for three shillings, and when he came with them to his coach, the two gentlemen were gone, and the doctor left in the coach, murdered, with a handkerchief tied fast about his neck, with a coal in it (which will be proved to be the prisoner's handkerchief). Besides, there was a boy in the street there, who took notice of the coachman's being sent of an errand, and saw the two persons come out of the coach in great haste, and he going towards the coach before they went out of it, one of them did swear at him to be gone, and of him the boy took most notice, and was as positive as any man can be to the person of one that he never saw before, that the prisoner now at the bar was one of them, and was the person that did then swear at him ; but this witness is spirited away, and cannot be heard of, although he hath been described in the "Gazette," and diligent search and inquiry has been made after him. But we have his examination upon oath before the coroner ; and we must submit to the court how far that shall be admitted as evidence. Gentlemen, we will call our witnesses ; and if they prove all this matter, I be-

lieve every man here will be satisfied, that the prisoner at the bar is guilty of this base murder. Pray, call and swear Mr. George Wigmore. [Who was sworn with others.]

After evidence was brought, which proved the affair of the mortgage, the threatening language of Harrison, and his subsequent conduct in changing lodgings, as stated by counsel, the important testimony about the handkerchief was thus given.

Mr. Darnell. Call Mrs. Charles Jackson. [Who was sworn.]

Mr. Darnell. Pray, tell my lord and the jury, what you know concerning Mr. Harrison's coming to lodge at Mr Garway's, and when he went away, and what you know of any handkerchief he had.

Mrs. Jackson. He came on the day before Christmas-Eve, to lodge at my father's, Mr. Garway's house, and lodged there several nights, and went away the 3rd of January at night with his things, but was absent some nights between his coming and going away; and whilst he lodged there, I observed a handkerchief in his hand, as I was making a fire for him in his chamber, and the more, because he had said he was a parliament-man (M.P.), and I thought it more like a seaman's handkerchief, than a parliament-man's, and our maid had an apron of the same kind of stuff. [Then the handkerchief was produced in court by the coroner, and the coal in it, wherewith Dr. Clenche was strangled.]

Mr. Darnell. Mrs. Jackson, I desire that you would look upon that handkerchief, and tell the court what you know of it.

Mrs. Jackson. This is the handkerchief that I saw Mr. Harrison hold to the fire, when I was making of it in his chamber, or very like that handkerchief, for I observed it to be very like my mother's maid's apron. [Then a piece of the maid's apron was produced, and they being compared, were very like.]

Harrison. Did you hear me say I was a parliament-man?

Mrs. Jackson. Yes, I heard you say so.

Harrison. Perhaps you might hear my boy say so.

Mrs. Jackson. Your foot-boy said you were a parliament-man: and you said so yourself.

The transaction itself, in which Dr. Clenche lost his life, was then proved as follows:—



Mr. Darnell. Swear John Sikes the coachman. [Which was done.]

Mr. Darnell. Give an account to the court what you know about carrying two men in your coach and how you found Dr. Clenche murdered.

John Sikes. My lord, on the 4th of January last, being Monday, I was at the play-house, and there I took up a man and a woman, and carried them into the city; so I brought the gentleman back again to the Green-Dragon Tavern in Fleet Street; and then, he said he would pay me by the hour; he said that it was but much about nine o'clock. Then I left him, and was driving up the street, towards the Temple, and two men stood in Fleet Street, about Fetter-Lane end, and they asked me if I knew Dr. Clenche, who dwelt in Brownlow Street in Holborn? I told them, that I did not know Dr. Clenche, but I knew the street. So they went into my coach, and one of them bade me drive thither, and I did, and stopped at the street's end; because the gate at the other end was shut, so that I could not turn my coach: and one of them bid me go and tell the doctor that there were two gentlemen in a coach at the street's end, that would desire him to go with them to see one that was not well. The doctor asked me if I could tell who they were? Or, who it was that he was to go to? I told him that I could not tell. The doctor was in his night-gown and slippers, and he dressed himself: and when he came to the coach, one of them removed from his place, and gave him the hinder part of the coach, and told him that they had a friend that was not well: and one of them bid me drive to Leadenhall-market; and when I came about Holborn-bars, one of them called to me, and asked me why I drove so slowly? and bid me drive faster; so I drove fast, and came to Leadenhall: and then one of them bade me drive to the Pye Tavern without Aldgate, and there ordered me to stop. And when I had stopped there, one of them called to me, and told me that I need not stir out of my coach box, but call to the boy at the tavern, and ask for one Hunt, a chirurgeon, which I did do: and when the boy came to me again, he said there was no such man. Then one of them bade me drive back again to Leadenhall; and in the time I stayed there, and turned my coach, Aldgate was shut; and when I came to the gate, one of them gave sixpence to the watch, and the gate was opened, and I drove to Leadenhall-gate. And when I came there, I stopped again, and one of them gave me half-a-crown, and bade me go and buy a fowl of one Hunt, a



poulterer ; but after I had gone a little way from the coach, he called me again, and said, here, coachman, you had as good take another shilling, and buy a couple : so I went and bought a couple of fowls, but could find no such poulterer as Hunt ; so I bought them of another, and I gave three shillings for them. And when I came back to the coach side, I found Dr. Clenche (as I thought) sitting against the fore seat, with his head against the cushion : I pulled him, and cried, Master, master, for I thought he had been in drink, but I could not get one word from him ; and then I went to the watch, who were near ; and when they came we found him strangled, with a handkerchief about his neck, and a coal in it, placed just upon his windpipe, but the other two men were gone.

Lord Chief Justice. Had one of the two men a cloak on ?

Sikes. I cannot remember that.

L. C. J. What kind of habit had he ? Had he black clothes on ?

Sikes. My lord, I cannot tell justly what clothes he had on.

L. C. J. You have heard him speak : what said he ?

Sikes. My lord, he never spoke to me ; it was the other man.

Harrison. What kind of a man was the other ? was he less than I, or taller ?

Sikes. He was taller than you, with his own hair.

Mr. Darnell. Can you be positive that the prisoner at the bar is one of those two persons ?

Sikes. My lord, one of those two persons had a perriwig on, of a light-coloured hair : and I do verily believe, that the prisoner at the bar is the same person ; I cannot be positive he is one of them, but as near as I can judge of a man whom I have seen but once, he is one of them.

Harrison. My lord, I desire your lordship to observe the time that he took the two men up, and what time it was they ran out of the coach.

L. C. J. Coachman, what time was it they left your coach ?

Sikes. About half-an-hour past ten, and it was about a quarter-of-an hour past nine when I took them up.

Mr. Darnell. Pray let's ask the coachman one thing more. Coachman, look upon that handkerchief ; do you know it, and where did you see it ? [The handkerchief was produced by the coroner.]

Sikes. I do believe that is the same handkerchief that was about Dr. Clenche's neck when he was found murdered.

L. C. J. Call the coachman. Hark you, in what posture did you find Dr. Clenche when you came back to your coach ?

Sikes. My Lord, he was sat in the bottom of the coach, leaning on one side, with his head against the cushion.

L. C. J. Was a handkerchief then about his neck?

Sikes. Yes, my lord, I untied this handkerchief, and this is the same; and here is the coal that was lapt in it; it was lapt in the middle of it, and it laid against the doctor's wind-pipe.

Mr. Darnell. Call Mr. Rebone and Mr. Marriott. [Who were sworn.]

Mr. Darnell. Mr. Rebone, tell what you know concerning the handkerchief, and how you found the doctor.

[He takes the handkerchief, and looks on it.]

Rebone. This handkerchief was about the doctor's neck, and the coal in it. And it lay just upon his wind-pipe, when I saw him dead in the coach. The coachman came to Mr. Marriott's house, and asked for a constable, and we went to the coach-side, and there we found him lying along; and we took him, and carried him to the Bull-Inn, and there he was let blood on the arms, and the chyrurgeon took about half a spoonful of blood out of his right arm; and he was let blood on the other arm, but that did but just trickle down, and we could not get him to life again: and we found a silver ink-horn in his pocket, and that, and the rest of his things, were secured. This is all I can say to the matter.

Mr. Darnell. Call Mrs. Eleanor Ashbolt. [Who was sworn.]

Mr. Darnell. Pray tell my lord and the court, what you know of any persons you saw in a coach at Brownlow Street end, that night Dr. Clenche was murdered.

Mrs. Ashbolt. May it please your lordship, I went out of an errand for one Madame Anwell, a gentlewoman who lodges at my mother's house; and coming home again, I saw a coach stop at Brownlow Street end between nine and ten o'clock at night, and the coachman went to the side of the coach: and one in the coach bade him go to Dr. Clenche's, and tell him, that there were two gentlemen stayed for him in a coach: and as he went up the street, he went slowly, and looked back two or three times: whereupon one of the persons leaned out of the coach, and did swear at the coachman to make haste; and I went round the coach, and could discern Mr. Harrison's face; and I stayed, and saw Dr. Clenche go into the coach, and one of them gave his place to the doctor.

Mr. Darnell. Why were you so curious, mistress, and what did you observe further?

Mrs. Ashbolt. I thought they might give the coachman a slip. I well observed Mr. Harrison, but do not know the other man. There were two lamps burning, one in Brownlow Street, and the other in Holborn, over against the end of Brownlow Street, and they lighted quite through the coach; and the men pulled themselves backwards, when they saw me look on them: it was that night that the doctor was murdered. I went to Newgate afterwards. Madame Clenche desired me to go and see Mr. Harrison; and when I came to Newgate, it seems he was writing letters, so I staid before I went into the room: and there were two men with me, and Mr. Harrison was talking very loud; said they to me, who is it that speaks now? why, says I, it is one of the persons that was in the coach when Dr. Clenche was murdered.

L. C. J. Who are those two men that were with you?

Mrs. Ashbolt. One of them was one Mr. Jones, a coach-maker in Holborn, and the other was Madame Clenche's coachman.

L. C. J. Did you know the prisoner, when you saw him in Newgate to be one of them that were in the coach?

Mrs. Ashbolt. Yes, I did; I knew him to be the same man, as soon as I saw him: and he changed countenance as soon as he saw me.

Harrison. My lord, this woman is certainly hired by the villains that are against me. Pray, ask her, my lord, why she did not make a discovery sooner?

L. C. J. Mistress, what say you to that?

Mrs. Ashbolt. I acquainted Madame Anwell what I had seen and observed, and then she told Madame Clenche, after last sessions; and then she desired me to go to Newgate to see Mr. Harrison, and I went accordingly; and I should have told it to Madame Clenche sooner, but my mother was loath I should be concerned about such a thing.

Added to this, was the following deposition, taken before the coroner' which was read in court, upon its being shewn that the witness, Boswell, was kept away by the prisoner or his friends.

Cl. of the Peace reads:

"12 Januarii, 1691. Andrew Boswell, servant to Richard Tims, shoemaker, sworn and examined touching the death of Andrew Clenche, doctor of physic, deceased, saith That he, this informant, being sent to Mr. Parker's at the Bull-Head ale-house in Leadenhall-street, on Monday last was se'nnight, being the 4th of this instant January, between the

hours of ten and eleven o'clock in the evening, saw a coach standing against Leadenhall-market ; and heard some person that was in the coach say, Make haste : and this informant says, that according to the best of his remembrance he heard him talk of a poulterer's. And this informant says, That soon after the coachman was gone into the market, this informant saw two persons go out of the coach, one whereof had, as this informant believes, a black coat on ; and that this informant saw the same person, as soon as he came out of the coach, fling a cloak over him : and then both the persons went through the market on the west part. And this informant saith, That this informant going to look into the coach, the person that had the cloak on him, cry'd damn him ; and this informant saith, That he, this informant, thereupon going away, went to Mr. Parker's, and told them, that two persons had cheated a coachman, or to that effect.

“ And Boswell being further examined the 23rd day of January, 1691, touching the death of Andrew Clenche, saith, that he hath seen Henry Harrison, now a prisoner in their majesties' gaol at Newgate, and believes he was one of the persons that came out of the coach at Leadenhall, a little after ten o'clock at night, on Monday the 4th of this instant January ; and believes he knows him by his voice. And soon after, this informant understood that the said Andrew Clenche was murdered in a coach, being the same coach which the said Harrison, and another person unknown, a little before went out of.”

Harrison, in his defence, attempted to prove an alibi, but failed, from some of his witnesses being shewn to be of bad character and conduct, and from others, who were credible, not helping him by their evidence.

While the counsel for the crown was in the course of contradicting this defence, a remarkable instance occurred, to shew the ready and strict justice of Lord Holt. Mr. Darnell called a witness to prove some felonious act or intention of the prisoner three years before, when the judge interposed, exclaiming indignantly, “ Hold, hold, what are you doing now ? Are you going to arraign his whole life ? Away, away, that ought not to be ; that is nothing to the matter.”

The summing up of Chief Justice Holt, in this case, is a specimen of judicial clearness, conciseness, and impartiality. After going through the whole evidence for the prosecution, the learned judge thus proceeded to the conclusion of his address :—

“ You have heard likewise what the prisoner says for himself; he does undertake to prove that he was in another place; (that is) that he should come into Maccaffee’s house in Crown Court, over against Serjeant’s Inn, in Chancery Lane: and Maccaffee, he tells you, that there were some other company there, and that Harrison came in very cold, and that they went to cards, and played for one penny a corner at whist; and that he did continue there from nine till eleven o’clock; and if he was there then, it is impossible he should be guilty of this fact, for the fact was done between the same hours.

“ Maccaffee’s wife tells you the same, and they both tell you who were there besides, and who played together, and are positive that the prisoner was there.

“ Baker says, that he went away about half-an-hour after ten at night, and left Harrison behind him. To confirm this evidence, they have called two other witnesses, besides the drawers at the King’s-Head-Tavern, viz. Mr. Sutton the chyrurgeon, who lives in Stone Cutter’s Street, and Mr. Russell. Mr. Sutton says, they had been at the Horse-Shoe-Tavern in Chancery Lane, and called for half-a-pint of sack at the King’s-Head Tavern when they came by; and as they sat in the coach, Mr. Harrison came by accidentally, and one of them looking out of the coach cries Harry or Harrison; and he went to them, and they drank together another half pint of sack.


“ As to their meeting with Harrison, and as to other passages there, Russel says the same: but as to the time of night he is not positive. And they sent one of the drawers to a house in Crown Court to enquire for somebody there.

“ The drawers of the King’s-Head Tavern say, that Mr. Sutton and Mr. Russel did call there about that time; and that they drank two half pints of wine: and that when they were drinking, a man came by with a hanging coat or cloak on, and drank with them. And one of the drawers went to call somebody in Crown Court; and one of the company up with his muff, and gave him a slap in the face.

“ Now this is the sum and substance of the evidence that you have heard on the behalf of the prisoner; to induce you to believe that he was not the person that was not concerned in the murder of Dr. Clenche.

“ To which evidence, an answer hath been offered;

“ First, as to those witnesses, Maccaffee and his wife; divers witnesses have been produced to prove, that they are people of doubtful credit; it seems they keep a house of ill fame.”



Harrison. I am glad, my lord, that I was there.

L. C. J. "Well, well, gentlemen, the people of the house are not of very good reputation ; they keep a naughty and disorderly house (if you believe the witnesses), you may consider of their credit.

"And as to Mr. Baker ; about nine years since he was convicted of an arrant cheat, which is no less than forgery, for altering the scavenger's rate for St. Giles's parish, and therefore the less credit is to be given to his evidence ; for now it appears, that he is a knave upon record : and the very record itself was produced against him, which is true without doubt, notwithstanding his pretence of innocency. What is said by Mr. Russel and Mr. Sutton, I must leave to your consideration ; they had been a drinking, and the drawer says, they were at the King's-Head Tavern at eleven of the clock at night. Mr. Harrison, the next day after the murder, met a gentleman at Joe's coffee-house in Salisbury Court ; and though he had taken a lodging in Paul's Church Yard, yet he said, that he was newly come to town, and had been in Kent, and had remained there about three weeks ; and that he wanted a laundress and a lodging, although he had not been out of town, and had taken a lodging but the day before ; and then he told the witness, who discoursed with him about the death of Dr. Clenche, that he had formerly loved him, but he said he had been of late a barbarous rogue to a poor gentlewoman, a friend of his ; and that the just judgment of God had fallen upon him for so doing, and that he would write to her to give her an account of it, and advise her to write to Mrs. Clenche, and to tell her, that she was a widow now as well as Mrs. Vanwicke ; and he thought by that means to move Mrs. Clenche to pity her, being a widow as well as herself ; and that whilst they were talking thus, one Mr. Ravenscroft tells him, that Dr. Clenche was murdered, and that a bully of the town, that belonged to a gentlewoman in the compter, one Mrs. Vanwicke, was suspected. At which Mr. Harrison was much startled, and said, that no one was concerned with that gentlewoman but himself ; and for aught he knew he might be taken up for it. This is that which he said.

"Now what said Mr. Harrison further for himself ? Why, says he, this gentlewoman is not in prison at the prosecution of Dr. Clenche, and was not so affirmed, but so reported ; and whether it were so or no, is no great matter. Gentlemen, you ought to consider of the evidence that you have heard against him, and also to weigh well the evidence he hath brought for himself.

“ It is most plain, if you believe the witnesses, that Mr. Harrison was concerned for this woman Vanwicke, and hath threatened Dr. Clenche, called him rogue and rascal, and said, that he deserved to have his throat cut ; that Harrison went under a disguise for some time before the murder. You have had an account of the handkerchief, what kind of handkerchief Harrison had, and what handkerchief was taken about Dr. Clenche's neck you have seen : and you heard what evidence was given by Mr. Humston ; how the prisoner was with him about nine o'clock that night ; and how he refused to stay and sup with Mr. Humston. If Mr. Harrison had no earnest business, one would have thought he might have staid with Mr. Humston, better than to have gone to an ale-house in Crown-Court, and played at cards at one penny a-piece a corner ; he might have had better fare, no doubt.

“ The witnesses for the prisoner say for him, That he came to Maccaffee's house about nine o'clock at night, and staid till eleven : that is contrary to that evidence given for the king, viz., That he was in the coach at Brownlow Street end, for if he was at Maccaffee's house all the time they mention, it is impossible he should be guilty. All these things are under your serious consideration. You had best go together, and if you are not satisfied upon the evidence you have heard, that he is guilty, then you ought to acquit him ; but if you are satisfied that he did commit this murder, then you ought to find him guilty.”

Harrison was found guilty, and, on the last day of the sessions, was sentenced to death by the Deputy Recorder of London. The prisoner though admitting the fairness of his judges, protested against the justice of his conviction. He was executed on the 15th April, 1692, and died asserting his innocence to the last.

John Cole was also tried for this murder at the Old Bailey, on the 2nd September following, but the evidence against him being defective, he was acquitted. Sir William Dolben, and Sir John Powell, who presided on this occasion, were both Whig judges of fair repute, and ability. With this trial ceased all further investigation into the cruel and mysterious tragedy of Dr. Clenche's death.

## THE ABDUCTION OF MISTRESS PLEASANT RAWLINS.

ON Wednesday the 18th Nov., 1702, the first year of Queen Anne's reign, the grand jury of Westminster found a bill of indictment against Haagen Swendsen, and others, for the abduction of a young lady of property, one Mistress Pleasant Rawlins; so called, though unmarried, according to the custom of that day, the style Mistress being applied to her name, as a person of condition.

The prisoners were tried at the bar of the Court of Queen's Bench, on the 25th November, 1702. The judges who presided were, the Chief Justice Sir John Holt, and the three puisne judges, Sir John Powell, Sir Littleton Powis, and Sir Henry Gould.

The indictment charged that—

“ On the 6th of November, 1702, one Pleasant Rawlins, gentlewoman and unmarried, grand-daughter and heir of William Rawlins, sen., then deceased, and daughter and heir of William Rawlins, jun., before then also deceased, was above the age of sixteen, and under the age of eighteen, and then had substance and estate in moveables and in lands and tenements, viz., in money, goods and chattels, to the value of £2,000, and in land and tenements to the value of £20 per annum, to her heirs and the heirs of her body.

“ And that the several persons Haagen Swendsen, Sarah Baynton, Hartwell, Spurr, and Thos. Holt, the said 6th day of November, with force and arms, the said Pleasant Rawlins, as aforesaid, being unmarried and heir, and having substance and estate at the parish of St. Giles-in-the-Fields, in this county, for the lucre of such estate and substance of the said Pleasant Rawlins, did unlawfully, feloniously, violently, and against the will of the said Pleasant Rawlins, take, carry, and lead away, with intent to cause and procure the said Pleasant Rawlins, against her will, in matrimony to the said Haagen Swendsen to be joined, and to him to be



wedded and married; and that the said Haagen Swendsen, being a man of a dishonest conversation, and of none or very little estate or substance, then, and there, by the help and procurement of the other defendants, did feloniously marry the said Pleasant Rawlins, and was joined to her in matrimony, to the great displeasure of God, against the laws of the Queen, to the disgrace and disparagement of the said Pleasant Rawlins, and to the great grief and disconsolation of all her friends, to the evil example of all others, against the form of the statute, and against the Queen's peace, her crown and dignity. And that the said Thomas Holt, after the said Pleasant Rawlins had been so unlawfully, violently, and feloniously taken, carried, and led away, and to the said Haagen Swendsen married and wedded as aforesaid; well knowing the said Pleasant Rawlins to have been so taken and led away against her will, and to the said Haagen Swendsen to be wedded and married, afterwards, viz., the said sixth day of November, in the said first year of the reign of this Queen, at the parish aforesaid, the same Pleasant Rawlins, and also the said Haagen Swendsen, did wilfully, knowingly, and feloniously receive, abet, comfort, conceal, and assist against the form of the said statute, and against the Queen's peace, her crown and dignity."

The prisoners having pleaded Not Guilty, Haagen Swendsen being a foreigner, was tried first. The jury empanelled for his trial consisted of half foreigners and half natives, and therefore the other prisoners were put aside for a separate trial; but as the facts against all were much mixed up, the jury for the second investigation was directed to stand near, and attend to Swendsen's case.

The Solicitor General (Sir Simon Harcourt, afterwards Lord Chancellor and Baron Harcourt) thus addressed the jury for the Crown—

Sol. Gen.—May it please your lordship, and gentlemen of the jury, I am of counsel for the Queen: it was formerly reckoned a less crime to steal a fortune of £10,000 than to steal 12d. of her money or goods; but in the third year of the reign of King Henry VII., to cure this defect in the law, an act of parliament was made, whereby the taking away a woman, having goods or lands, or being an heir apparent, contrary to her will, and afterwards marrying her is made felony, and upon this law the present indictment is grounded.

Pleasant Rawlins was the daughter of Mr. William Rawlins; he, having left her a considerable estate, appointed George Bright and William Busby to be her guardians. Mr. Bright being dead, the other guar-

dian, Mr. Busby, for the better education of Mrs. Rawlins, placed her under the care of his sister Sabina Busby. Mrs. Busby and Mrs. Rawlins have lodged about three years last at the house of the widow Nightingale. Haagen Swendsen, with Mrs. Baynton, lodged at Mrs. Blake's, in Holborn, and there they first projected and contrived how they might make a prey of this young gentlewoman. The first step they took towards executing this design was to get lodgings at Mrs. Nightingale's house for Mrs. Baynton; for which purpose she was to pass for a country gentlewoman of a plentiful fortune. One Mrs. St. John was sent to Mrs. Nightingale to take lodgings for Mrs. Baynton, commending her to be a very good woman; and that having the misfortune of a lawsuit, and being obliged for that reason to attend in town, it was her greatest care to lodge in so reputable a house as Mrs. Nightingale's was. Under this pretence, lodgings were there taken for her. At her first coming, she was forced to put on a disguise; she seemed to live a virtuous life, that she might ingratiate herself into the favour of the family, as often as she had an opportunity of conversing with any of them. She pretended that she had a brother of a good estate, one of the best men in the world; and she hoped he would shortly come to town, that she might see him. In a little time after came this Swendsen (being nothing related to her), and appeared as her brother, and frequently visited her under pretence of that relation. But Mrs. Baynton was too well known in town to continue long undiscovered; notice was soon given to Mrs. Busby of the vicious life Mrs. Baynton had led, and that she was not fit to be in the same house with her. Mrs. Baynton having discovered this, and finding she had no time to bring about her designs by frauds and wiles, and that no other ways were left but open force, the prisoner at the bar and she took measures accordingly; and in order thereto it was agreed that a writ should be taken out against Mrs. Rawlins. Mrs. Baynton contrives to get Mrs. Rawlins and Mrs. Busby into a coach, and at a place appointed a signal was given, and the writ executed, and Mrs. Busby, Mrs. Rawlins, and Mrs. Baynton, were all carried in the coach to the Star and Garter tavern in Drury-lane, where particular care was taken to separate Mrs. Busby and Mrs. Rawlins, because unless they did that, they could not hope to accomplish their designs. Mrs. Busby was by force kept at that tavern, without any process against her, till the marriage was over; but Mrs. Rawlins was forcibly carried to Hartwell's the bailiff's house. Mrs. Baynton pretended to be much concerned for Mrs. Rawlins, and went in all haste to call some of her friends

to be bail for her. Some time after Mrs. Rawlins was got to Hartwell's in comes Mrs. Baynton, pretending that by mere accident she had discovered her being there, hearing her name as she was passing by the door; that she had been in search, but could find no help; and that her last hope was her dear brother Swendsen, and she doubted not but he would bail her: he by agreement had been placed near the bailiff's and so was soon found, and brought thither, and was very ready to assist her. In order to her discharge, the prisoner, the bailiff, and Mrs. Baynton, carried Mrs. Rawlins to another tavern, where they had a parson ready for the purpose; and there this young gentlewoman, through divers artifices, of which you shall have a full account, was constrained to marry. These are the principal circumstances, and they shall be plainly proved to you.

Serj. Darnell.—My lord, I think it necessary to open a little the manner of getting this young lady away, and the contrivance of getting her into the coach: for your lordship knows, that if any are taken away without their consent, though they do afterwards consent to be married to such taker, yet he is guilty within this statute. They were resolved to take this woman by force, when they found they could not otherwise accomplish their end. And Mrs. Baynton knowing Mrs. Busby and Mrs. Rawlins were used every Friday morning to go to a chapel, called Oxendon chapel, Mrs. Baynton said, I am going to Golden-square, and if you are going to the chapel, I will set you down, if you please: they glad of such a convenience, thought no harm, but went into the coach. They had gone no farther than Dartmouth-street, but these bailiffs come. Hartwell opens the coach, and goes into it; they cry out to the people for help; Hartwell plucked up the glasses, and those bailiffs about the coach cried 'it is an arrest of a cheat that owes money to tradesmen.' By this means they carried her to the Star and Garter in Drury-lane. When they had them there, the next thing was to get her away from her friend Busby, or unless that was done, they despaired of getting her to marry Swendsen. Mrs. Baynton pretended to go find out Mrs. Rawlins's friends to bail her; but that was to meet with Swendsen: as soon as Mrs. Baynton was gone, the bailiffs forced Mrs. Rawlins from Mrs. Busby, and Mrs. Busby was kept there by force till five o'clock, till all was over. The bailiffs as they carried Mrs. Rawlins away, called her jade and slut, and bid her pay her debts and said, put on your mask, you jade, for we will have no mob to rescue you; she put on her mask, and the rest of the bailiffs followed her, and said she was a cheat and was arrested. Then it was time to open the

scene. Hartwell carried her to his house, and Mrs. Baynton pretending to be coming by and hearing her name, opened the door, and by an extraordinary manner, burst into the house, and told her, Madam, I went to all your friends, but could find none at home; but I have been with my dear brother Swendsen, who will come with another to bail you, and it will not be long before they come; for they were placed at the Five Bells very near Hartwell's house: upon this she went out again, and brought in Swendsen, and one Holt, who keeps the Mitre tavern in King-street, Westminster. And truly when they were there, and talked of being bail, then they would all go in a coach to the Vine tavern, the place where they designed the marriage; and they had got two proper instruments there for the business, the chaplain and the clerk of the Fleet. When they had her there, my lord, the bailiff asked if she had any bail? Mrs. Baynton said, that Mr. Swendsen and Mr. Holt would be her bail; the bailiff said, I will not take Swendsen's bail, he is a man I know not; but Mr. Holt I know, I will take his. The poor woman begged upon her knees, for Christ's sake let me send for my friends; and they pretended to send for abundance of them, but none came. Then she was threatened with Newgate, for that often came out; If you cannot get bail, to Newgate you must go, and there must lie. This was often said by Hartwell. Then Mrs. Baynton cried, (as she could do at command) O how I pity you, Mrs. Rawlins, is there no way in the law to help you? I believe if you were married, that would put an end to the action. Then speaking to the bailiff said, if this gentlewoman were married, would it not put an end to it? The bailiff said I cannot tell but it might, if such a thing were. Well, now her rich brother Swendsen is proposed, she must be married to him; the bailiffs threatening her severely, that to Newgate she must go, if she did not. Immediately they brought in the chaplain and clerk of the Fleet, and read the form of marriage, and after carried her to several places lest they might be followed and prevented, beds being provided for the purpose at those places, as your lordship shall hear. And, my lord, this taking of this woman thus away against her will, is an offence against the act 3 Henry VII., and, my lord, we desire that the statute might be read.

L. C. J. Holt.—It shall be explained.

Mr. Broderick.—My lord, there was a whole night completed before the prisoner was seized.

Then Mr. W. Busby is called for and sworn.

He is asked, Do you know Mrs. Pleasant Rawlins ?

Serj. Darnell.—Give an account of her.

Busby.—She is the daughter of William Rawlins, deceased, who left his estate to Dr. Bright and myself, to be sold for payment of his debts and legacies, and left the surplusage to his daughter, which is about £2,000.

Serj. Darnell.—What lands has she ?

Busby.—She has £20 a-year.

Serj. Darnell.—What age is she of ?

Busby.—She is near eighteen.

Mr. Montague.—Was she ever married, or no ?

Busby.—She was unmarried.

Then Mrs. Sabina Busby was called and sworn, as also Mrs. Nightingale.

Swendsen.—My lord, I beg the favour that only one witness be heard at a time.

Sol. Gen.—Mrs. Nightingale, do you know Mrs. Pleasant Rawlins and Mrs. Busby ?

Nightingale.—Yes, I do.

Sol. Gen.—Have they lodged at your house ?

Nightingale.—Yes.

Sol. Gen.—How long ?

Nightingale.—Above three years.

Sol. Gen.—Have you any knowledge of Mrs. Baynton ?

Nightingale.—Yes.

Sol. Gen.—How came you acquainted with her ?

Nightingale.—One Mrs. St. John came to me to know whether I took boarders ? I said, I had taken some, but would take no more, unless it were the same ladies again.

L. C. J. Holt.—Who was it came to you ?

Nightingale.—One Mrs. St. John.

Sol. Gen.—Mrs. Nightingale speak out, that my lord may hear you.

L. C. J. Holt.—Did Mrs. Busby lodge with you ?

Nightingale.—Yes, my lord, we were very intimate before ; and since it pleased God to take away her husband, I was pleased with her, and very willing to take her into my house.

Sol. Gen.—Acquaint his lordship how Mrs. St. John came to you.

Nightingale.—Yes, my lord, as near as I can. She came to me and asked me if I took boarders ? I told her no, I would take none, except

it were those ladies I had before : she told me that she had an acquaintance that was a widow lady, that came out of Wiltshire, about a suit of law, and would be in a sober family near a church. But, however, I denied her lodgings, and did expect to hear no more of her. But about three weeks or a month after, she came to me again, and asked me whether I had altered my resolution.

L. C. J. Holt.—Go on.

Nightingale.—My lord, Mrs. St. John said, that the lady was come to town on the Saturday night before, very much indisposed in her journey. I asked her whether she knew this Baynton, or no ? Mrs. St. John said yes, she was very intimate in the family, and she said a great deal more of her, which I cannot remember. She said also, that she would have boarded herself and would have been glad of her company, if she had had conveniences for her. Then she asked me whether she should come herself and give her own character ? We thought no harm, she being a woman, and not a man. She further said that Mrs. Baynton had seen a maid, whom I knew, and she believed she would take her. I inquired of another who lived in the Mews, if he knew Mrs. Baynton ; he said yes, and that she came of a good family. At length she came, and made a very modest appearance in her behaviour and garb. She said to me, that I was very curious in taking in boarders, and for that she liked me the better. I consented she should come. She asked me what I would have a week ? I told her 12s. for herself, and 10s. for her maid. She concluded to come on the Wednesday following ; which she did, with her maid—a modest girl, and a neighbour—which gave me the more encouragement. She carried herself very well until Michaelmas-day at night, when we heard of her new brother ; she seemed elevated at the news, and fell into convulsion fits, which I believed were real fits. She said she had a dear brother, a good Christian, and he would come on the morrow. When he came, he brought two gentlewomen with him, very modest, whom I never saw before, nor since. Mrs. Baynton made a pot of coffee, and sent for a bottle of wine, and she told her brother before me, what good lodgings she had, and said she wished he would come and lodge near them, for she knew he had but a puny stomach, and believed he would like her victuals. He said it was not convenient for him, because his business called him every day to the Change. She said also, that there was a bowling-green near them, where he might divert himself. But all would not do. She asked me what I would have a meal if her brother

should come at any time : I said, when I had other ladies, if any of their friends came, I had twelve-pence a meal of them. On Friday he came : I went to church, and left them together at cribbage, as I found them on my return.

L. C. J. Holt.—What day of the week was this ?

Nightingale.—The Friday before the sacrament. Mrs. Baynton said to Mr. Swendsen, before Mrs. Busby, you have an extraordinary hand at making punch : so they agreed to make a bowl the Monday following ; but Mrs. Rawlins hardly drank any, she not liking any strong liquors. After this she told me her brother was very ill of his journey, being lately come out of the country, though I did not understand he was in it. The Monday before Michaelmas-day, we were at dinner with two more than our family, when Mrs. Baynton said, she had an interest in a Norway ship, and invited us all aboard : but he, viz., Mr. Swendsen, did not come to our house till four days after : but on Friday we concluded to go on Saturday ; there were eight of us in company in all—Mrs Rawlins, Mrs. Busby, I and my daughter, and Mr. Ball, another lodger, belonging to the exchequer. We went and had much discourse : after having drank a glass of wine, the cloth was laid, and the master offered a bowl of punch ; says Mr. Swendsen, Ladies, I would please you all, and leave you all to your liberties, to drink what you please.

L. C. J. Holt.—Is this person Mrs. Baynton's brother ?

Nightingale.—This is he that went for her brother.

L. C. J. Holt.—Whereabouts is your house ?

Nightingale.—Near Tuttle-fields.

Sol. Gen.—This Baynton came to you under the character of a country lady on a law-suit ; do you understand that she was so ?

Nightingale.—My lord, she said she came from the Bath.

Sol. Gen.—You misapprehend the question ; do you understand that her pretence was true or not ?

Nightingale.—I enquired of several persons, who acquainted me that the Bayntons lived in Wiltshire : but it was not long before we began to suspect her, for there seemed to be an extraordinary love between her and Swendsen, more than is usual between brother and sister. I said, Madam, I wonder you do not marry your brother. She said, she thought that it was not lawful. I said there was such a thing done in Westminster, of a man's marrying two sisters.

Sol. Gen.—Pray call to mind what time it was that you first gave notice to her that she should not continue in your lodgings.

Nightingale.—When I first mistrusted her, I gave notice of it in my family. But we being all women, and fearful of her, thought not fit to give her warning till her month was up. But before that, she came to me, and told me, and said, Mrs. Nightingale, I have received a letter from my sister Baynton in the country, which informs me, that the trustees will agree, and so I design to return when my month is up, for this town is very chargeable. Very well, said I, for I expect some ladies very shortly. I went down to my family, and expressed my joy to them, and said I was very glad Mrs. Baynton had prevented me; for if she had not given me warning, I would have given her warning, for I resolved she should not stay.

Sol. Gen.—Mrs. Nightingale it seems you had notice of Mrs. Baynton's ill carriage: did you take any notice of it to herself?

Nightingale.—No, I did not, but I gave the maid notice as soon as I suspected any thing.

Sol. Gen.—Do you know whether the maid had told anything to her or not?

Nightingale.—The maid said to her, Madam, do not you see a strangeness in the family? Yes, said she, I can see and bear a great deal; but when I am roused, I'll be like a lion.

Sol. Gen.—How long was this before Mrs. Rawlins was taken away.

Nightingale.—I cannot prefix the time, but it was before she gave me warning.

L. C. J. Holt.—Was she gone from your house before this thing happened?

Nightingale.—No, my lord; she told me on Wednesday, that her time was out; but said, there is a fellow in town that I fear will cheat me, and I am taking out a statute of bankruptcy against him, which I think will cause me to stay in town a week longer; she also told me, she had taken a place in the coach to go on Thursday, but must lose her earnest, for this business would detain her a week longer.

Mr. Raymond.—Did you ever observe they were together in private?

Nightingale.—No, my lord; we never had any suspicion of Mr. Swendsen, but of the woman, for she could put on all manner of disguises.

Mrs. Busby being called, she is sworn.

Sol. Gen.—Pray do you know Mrs. Rawlins?



Busby.—Yes, I do.

Sol. Gen.—How came you first acquainted with her ?

Busby.—My brother Busby was one of her guardians, and put her under the care of my husband, while he was living, which was four years ago this Christmas. She came to us by the consent of her guardian.

Sol. Gen.—At what place did you lodge ?

Busby.—We lived in Stretton Grounds ; but since my husband died, which is three years last July, I left housekeeping, and then we went and lodged at Mrs. Nightingale's.

Sol. Gen.—How long have you continued at Mrs. Nightingale's ?

Busby.—We have continued there ever since.

Sol. Gen.—Do you know Mrs Baynton ?

Busby.—Yes, I do ; she lodged at Mrs. Nightingale's.

Sol. Gen.—Was there anybody who used to come to her there ?

Busby.—None except a change-woman.

Counsel.—Do you know anything of Mr. Swendsen ?

Busby.—Sir, the first of his coming to Mrs. Nightingale's, was the day after Michaelmas-day. Mrs. Baynton said that she had a brother that was come to town, which he did the day after, with two gentlewomen, which I never saw either before or since ; but Mr. Swendsen after this came several times to her as her brother, her sister's husband ; and she desired that he might dine with her sometimes ; for which she agreed with Mrs. Nightingale at 12d. per meal.

Sol. Gen.—Was this Mrs. Rawlins at any time in private with Swendsen ?

Busby.—Never that I know of in all my life ; we were always in company together when he dined there, and the times that he dined there we computed to be nine or ten ; he was there sometimes when we were not at home.

Sol. Gen.—How did Mrs. Baynton behave herself when she was at Mrs. Nightingale's ?

Busby.—We thought very well of her, till at last we discerned too much freedom between Mr. Swendsen and herself ; we suspected her, and thought she would drink ; and were informed she would swear ; she said she must stay in town about a month or six weeks about a suit of law. Her maid told her of the strangeness of the family ; she said they had best be civil, or else she would stay and plague them. She told Mrs. Nightingale at length, the town was chargeable, and her business done, and that she would return into the country.

Sol. Gen.—What do you know concerning Mrs. Rawlins being taken away ?

Busby ?—Mrs. Baynton knowing it was our custom to go to Oxendon chapel every Friday morning, she came and told us she had occasion to go to Golden-square ; and that being in the way, she invited us to go with her in the coach, and she would set us down at or near the chapel. When we came to Dartmouth-street, somebody bid the coachman stop : I expected she should set us down as she promised. On that side where I sat, there were old buildings, and as I was looking out, I heard Mrs. Baynton cry out to the coachman, drive on ; and all of a sudden I saw a man in the coach, which was Hartwell the bailiff. Mrs. Rawlins and I were in a very great fright, knowing nothing. I said, for God's sake, let's come out, we are not concerned. Hartwell said we were the persons that he came for. I begged of him to let us come out : Hartwell had his arms about Mrs. Rawlins's side, and said, it is this lady and you that I am concerned about. I asked him what it was. Said he, let you and I have two or three words together, and all will be well enough. I said, you do not think I will say anything to you, unless I have my friends by me ; Mrs. Baynton in the coach, said, no, madam, be sure you don't. I could not tell what he would do with us ; and at length he carried us all to the Star and Garter tavern in Drury-lane. I pressed him to let us go to Fleet-street, for I had friends there. Hartwell was very angry, and would hear nothing of it. When we came to Drury-lane, Mrs. Baynton would have had us put on our masks : I said, I had done nothing amiss, and I would not. When we were in the room at the tavern, Mrs. Baynton hastened out of the room as fast as she could, pretending to go for my friends. Mrs. Rawlins and I were in a great consternation, wondering what they would do with us : I took hold of her arm, and told her I would live and die with her. The bailiffs came in, and said she was their prisoner, and took her by violence from me : they told me she must go with them, for they said she was arrested by a writ out of one court, and I by one out of another. When she was going, I put my head out of the window, and cried Murder ! murder ! several times : when I pulled my head in again, Spurr said, what have you got by your bawling ? and said they were better known there than I. They brought a man to me, who said he had orders to keep me, and that he had only a crown for his pains ; but he would not suffer me to send for any body. The gentleman of the house came up, and said I had done a diskindness to her

house by crying out murder ; she said to me, look and see whether your name be spelt right, for it may be a false arrest, &c. Wakeman that went away with Mrs. Rawlins, came back again, and said, the young woman was well, and that he left her eating fowl and bacon ; I said, I wish she was well. The gentlewoman of the house bid the bailiff shew me the writ ; he said he could not read well ; but there was the name of Sabina Busby, at the suit of one Jones : but when he heard my complaints a considerable while, he said he would go to my friends, and would go as cheap as a porter, and as soon. I sent him to Mr. Thornton and Mr. Nash : he pretended to go, but returned no more till night.

Sol. Gen.—You say you cried out murder ; how did Mrs. Rawlins behave herself then ?

Busby.—It was her great fright and crying that made me endeavour her rescue when we said we would die together, then it was when they forced her from me ; the surprise was so great that made me cry out after the manner that I did : upon which some neighbours came in, but they told them that it was an arrest, and therefore they would not meddle with it.

Sol. Gen.—Mrs. Busby, they kept you till night, you say ; did they take or require bail for you before you were discharged ?

Busby.—I will tell you, sir, if you please : I did not know what I was arrested for, it might be murder or treason for aught I knew. There was a little boy by, said, Madam, I know Mr. Unkle, your friend in Newmarket, and I will go for him : he went, but when he returned again, he said he was not at home ; which I thought was a lie. There was a poor man, a labourer, working in the chimney, he gave me a wink, and said, Madam, I will go for him ; but I said to him, Pray do not leave me ; I began to be afraid, for I did not know how my life might be concerned. Said the little boy, I will go anywhere for you. I sent him for two gentlemen, who came : the bailiffs said they had an action of £200 against me ; the gentlemen told the bailiffs they were come to bail me : the bailiffs were very impudent, but shuffled about awhile, and left me, and took no further notice.

L. C. J. Holt.—Did they take any bail for you ?

Busby.—No ; they left me with these gentlemen.

Mr. Montague.—When you went out in the morning, did you design to go anywhere else but to chapel ?

Busby.—Nowhere else.

Mr. Montague.—Was it your invitation to Mrs. Baynton, or her invitation to you to go in the coach ?

Busby.—It was Mrs. Baynton's invitation to me ; I had not a very good opinion of Mrs. Baynton, for we suspected her family ; but being to go shortly away, I apprehended no harm.

Mr. Montague.—Did Mrs. Rawlins go with you ?

Busby.—She did.

Mr. Montague.—Mrs. Busby, do you know the prisoner ? Is this the man that came to Mrs. Nightingale's house ?

Busby.—Yes, sir.

Judge Powel.—How long was it from the time that you parted after arresting, that you saw Mrs. Rawlins again ?

Busby.—The first time after was on Saturday, when they were before the recorder.

L. C. J. Holt.—When did you find her ?

Busby.—On Saturday in the afternoon.

L. C. J. Holt.—Were you at the finding ?

Busby.—No, my lord.

L. C. J. Holt.—What time was it ?

Busby.—About noon, I believe.

Mr. Montague.—When you saw her put into the coach, did you hear her cry out ?

Busby.—No, sir ; it was I that cried out.

Mr. Montague.—Did Mr. Swendsen make any entertainments or no ?

Busby.—But one, as I know of.

(Prisoner speaks to Mrs. Busby, and said, have you done ?)

Busby.—I think so.

Prisoner.—If you have, I will ask you a question : did you know of any love between Mrs. Rawlins and me ?

L. C. J. Holt.—Did you know anything of love between Mrs. Rawlins and the prisoner, or no ?

Busby.—No, my lord.

After some evidence to shew that Mrs. Baynton was not Swendsen's sister, or sister-in-law, and that she was a woman of bad repute, and after proof of the falsity of the writ and the sham arrest, Mistress Rawlins herself was called and sworn.

Sol. Gen.—Give an account to his lordship, after what manner you were arrested, and carried from tavern to tavern.

Rawlins.—My lord, I was arrested with Madam Busby, and carried to the Star and Garter tavern in Drury-lane.

L. C. J. Holt.—How were you carried thither ?

Rawlins.—I was in a coach going to Oxendon chapel, when three bailiffs were about the coach.

Sol. Gen.—Where did they carry you ?

Rawlins.—They carried us to the Star and Garter in Drury-lane.

Sol. Gen.—Who did they carry with you ?

Rawlins.—There was Mrs. Busby, Mrs. Baynton, and I, and Hartwell the bailiff; when we came to the Star and Garter, they forced me up stairs into a back room, but we got into a forward room; but we had not been there long till they parted Mrs. Busby and I; Mrs. Baynton was gone for our friends, as she pretended. I was in a very great fright, but Mrs. Busby saying, we will die together, they took me by force from her; Hartwell swore a great oath, and thrust me down stairs, and forced me out of a back-door into an alley. When he went to put me into a coach, I cried out, murder; then he threatened to put me into Newgate. He carried me to his own house, and nobody came to help me a great while; but Mrs. Baynton said, that as she was going by the door, she heard my name, and came in a mighty fright; she said to me, madam, I pity you, will nobody bail you? She told me, I will send to my brother, who shall be bail for you. She sent for him, he came into the room, and he said, what is the matter with you? I said, enough is the matter when I am arrested for £200 and owe no man a penny. Said he in a jocose way, what makes you affrighted at that? I have a good mind to arrest you myself. Then they took me thence to the Vine tavern in Holborn, where I was an hour or two before I heard anything of marrying, or any such thing.

Counsel.—What did they do with you all that time ?

Rawlins.—They got a dinner ready, and after we had dined, she begged of me to have her brother, and said, that if I did not marry him, I should be ruined. I told her I would do nothing without the advice of my friends. I desired my friends to be sent for, but they would not admit it. She looked on my ring on my finger, and said, let me see your ring from your finger? I said, no, you shall not. She said, I will force it off. I said, I will try that: but she forced it from me.

Prisoner.—Remember you are upon your oath.

Rawlins.—I know I am. When she took my ring away, I asked her

what she would do with it ; she said she would go and get a wedding ring made by it. I told her I would not marry without the advice of my friends. Away she went and bought a ring, and came up again, and said to her brother, she had a ring. Well, said I, give me my ring, and do what you will with the other. She said, if I did not marry her brother, I should be ruined for ever. There was a minister in the house, whom they said had been there about a quarter of an hour, but I supposed longer ; they brought him, with the clerk, up stairs, the parson saying, I hear there is a couple to be married : he asked no questions, but told me if I did not marry this gentleman, I should be sent to Newgate, and ruined for ever.

Counsel.—Give an account of what was done after buying the ring.

Rawlins.—When they brought the ring, they said to me, will you be married or no ? I answered, I will not ; there are none of my friends here, and I will not marry without the consent of my friends. They said, if I did not, I should be ruined for ever. So with many threats and persuasions, they at last prevailed with me to marry. I was forced to marry him out of fear, not of going to Newgate, but of being murdered.

Counsel.—Where did they carry you ?

Rawlins.—To Blake's house in Red Lion-street, Holborn.

L. C. J. Holt.—What time of day was it ?

Rawlins.—I cannot give an exact account ; but I think it was candle-light.

Prisoner.—It was about twelve o'clock at noon.

L. C. J. Holt.—What time was it that you were married ?

Rawlins.—My lord, it was about three o'clock.

L. C. J. Holt.—When you went to Blake's house, who was with you there ?

Rawlins.—None but Mr. Swendsen, Mrs. Baynton, and I.

L. C. J. Holt.—Was there any force or threats used when you were at Blake's house ?

Rawlins.—Yes, there was, my lord.

L. C. J. Holt.—How came you to be released ?

Rawlins.—It was Saturday morning before I was released ; there were some of my friends came to the place where I was.

L. C. J. Holt.—Then you were with him all night ?

Rawlins.—Yes, my lord.

L. C. J. Holt.—Mr. Swendsen, will you ask her any questions ?

Prisoner.—She must be my chiefest evidence, my lord, when the witnesses come ; she must be the chiefest of them all.

L. C. J. Holt.—You will not ask her any questions now, but when the witnesses are called ?

Prisoner.—My lord, I presume she does not go out of court. [Orders given for her to sit down.]

Sol. Gen.—We have done with our evidence at present.

L. C. J. Holt.—Mr. Swendsen, what do you answer to the evidence ?

Prisoner.—My lord, I am very much unprepared for a trial at present ?

L. C. J. Holt.—Why so ?

Prisoner.—Because I had but little time for preparation, and I am not prepared ; I desire that I may be allowed counsel.

L. C. J. Holt.—No, no, it cannot be allowed you ; and as for the time of your trial, you were told, if you would shew good cause to have it put off yet, the court would have done it.

Prisoner.—Then I hope if I speak anything that may be prejudicial to my cause, that the court will not take advantage from it. The first time I was at Mrs. Nightingale's, I was desired by Mrs. Busby and Mrs. Baynton to make a bowl of punch, which I did ; and we were very merry over it ; then I invited them to go on board a ship, which they all did, and we in a short time became very well acquainted. My lord, I desire my wife may stand by herself, and none of them near her.

L. C. J. Holt.—There is none near her that will hurt her.

Prisoner.—My lord, I beg she may stand by herself, that I may have a fair trial : I pray your lordship to grant me this favour. My lord, will you please to grant it ?

L. C. J. Holt.—Must I grant it only for your humour ?

Prisoner.—It is not a humour, my lord, but of a great consequence to me : will your lordship grant me it ? I beg it my lord, for it is the most material thing I have to ask ; I beg all those people may be removed from her ; it is the greatest and most material thing I have to say.

L. C. J. Holt.—I am sorry for it.

Prisoner.—It is so ; good, my lord, grant me that.

L. C. J. Holt.—There is nobody near her that concerns you at all.

Prisoner.—There are those by her that will do me no kindness. [Then she was ordered to be removed.]

Sol. Gen.—My lord, her standing there is enough to disorder her.

Prisoner.—My lord, she is very well.

L. C. J. Holt.—Remove her a little farther.

Counsel.—My lord, he does it on purpose to fright her.

Prisoner.—We went (as I was telling your lordship) aboard a ship, and they invited me to come the week following, to partake of a treat; accordingly I went, and there was one Mr. Pugh, and he and I made a bowl of punch. Mr. Pugh at that time courted Mrs. Rawlins, and that little time I was acquainted with her, I discerned she had a kindness for me, as I had for her; and I told her I could not be easy while she suffered Mr. Pugh to address her; she desired me to be easy, and it should be remedied.

L. C. J. Holt.—Mrs. Rawlins, do you remember any such thing?

Rawlins.—My lord, I do not remember any such thing, or that any such words ever came out of my mouth

Prisoner.—Did not you say this, Mrs. Rawlins, Mrs. Swendsen I should say; did not you say, if I would not sit by you, you would not eat a bit or a crumb: when I sat by you, and proffered my place to another, can you say you were not offended?

Rawlins.—No, I was not.

Prisoner.—Are you not upon your oath? Did not you give me some encouragement?

Rawlins.—I do not know how I could shew it you; I know not of any such thing.

L. C. J. Holt.—You ought to speak the truth, because his life depends upon it. Did you, in the first place, ever admit of his courtship, in order to marry you?

Rawlins.—No, my lord, I do not remember any such thing.

L. C. J. Holt.—Did you ever shew any kindness to him upon any such account?

Rawlins.—No, I do not know I shewed him any more kindness than all the rest of the family shewed him.

L. C. J. Holt.—Were you ever in his company alone?

Rawlins.—No, my lord.

Prisoner.—To give me more ease and satisfaction, after dinner we had a bowl and walnuts, Mrs. Swendsen peeled the kernels and gave them to me; she gave them faster than I could eat; she heaped my plate with them; every one at the table took notice of it, and she jogged me with her knee, that I should take them, and gave some to Mrs. Baynton, and bid her take them and give to me.



L. C. J. Holt.—Mrs. Busby, were you there ?

Busby.—Yes, my lord.

L. C. J. Holt.—Did you see anything of this kind ?

Busby.—No, my lord.

Prisoner.—Will your lordship be pleased to ask her yourself ?

L. C. J. Holt.—Mrs. Rawlins, did you ever give peeled walnuts to him, or send them to him in particular ?

Rawlins.—No, my lord, I do not know that I was more kind to him than the rest of the company.

The prisoner continued and concluded his defence in the same rambling way, endeavouring, but in vain, to shew that Mrs. Rawlins was in love with him, and had consented to the marriage. After the Solicitor General had replied, and the Chief Justice had summed up, the jury found Swendsen guilty.

The trial of the other prisoners Sarah Baynton, John Hartwell, and John Spurr was then proceeded with. The facts against them were the same as in the former trial. Sarah Baynton was found guilty, and the other two prisoners were acquitted.

On the following 28th November, Haagen Swendsen, and Sarah Baynton were sentenced to death, by Mr. Justice Powel. After sentence, Swendsen said—

My lord, now I am bound to do this woman justice. She hath not been the contriver of it. It was all done by my direction ; and for her sake I desire the Queen may know it.

L. C. J.—Well, that will clear up the doubt to some of your countrymen, who did think you were not the contriver of it.

Swendsen.—I desire, my lord, that the matter may be represented to the Queen as favourably as you can.

Sarah Baynton's execution was respited in consequence of her being *enceinte*. She was afterwards reprieved. Swendsen was hanged ; he made no speech at the place of execution, but left a paper in which he declared that he had conspired to make Mistress Rawlins his wife, but that she was a consenting party to the marriage.

In conclusion it may be observed, that the statute under which the unhappy man suffered death is now repealed, and the present Act, 9 Geo. IV. c. 31, subjects this offence of abduction to the penalty of transportation or imprisonment.

## THE JEALOUSY OF ROGER LOWEN.

THIS gentleman, whose strange and unmeaning jealousy brought him to the scaffold, was a person of some official rank in the reigns of William III. and Queen Anne. He was a native of Hanover, where he was born about the year 1667, and educated in the principles of the Lutheran religion. His father being huntsman to the Duke of Zell, that prince sent young Lowen into France, to obtain the qualifications of a gentleman, and on his return from his travels, he became one of the pages under the duke's master of the horse.

Lowen coming over to England when he was between twenty and thirty years of age, the duke of Shrewsbury (the same duke about whom more will be said in the trial that follows this) patronized him, and procured him a place. Having thus a settlement, he married a young English woman, with whom he lived in an affectionate manner for a considerable time, and in the year 1697, on his going abroad to attend King William at the treaty of Ryswick, he left Mrs Lowen with her cousin, who was married to Mr. Richard Lloyd, of Turnham Green.

When Lowen returned from Holland, he became, without apparently the slightest reason, extremely jealous of his wife, and he pretended to have received incontestible proof of her guilt with her cousin's husband, Mr. Lloyd.

This led to the fatal catastrophe which formed the subject of the following trial. Roger Lowen was arraigned at the Old Bailey, the 20th Sept., 1706, for the murder of Mr. Richard Lloyd, of Acton. He pleaded not guilty, and being a foreigner, was allowed a party-jury, and the privilege of speaking to the jury through an interpreter.

The following evidence was adduced :—

Mrs. Lloyd, the wife of the deceased, deposed, that Mrs. Lowen, the prisoner's wife, was her cousin, and had sent to her the night before the murder was committed, desiring to speak with her ; that accordingly, about seven o'clock the next morning she went, and about an hour after, her husband (the deceased), as he was riding to Acton about some business

called upon her at Mr. Lowen's house ; upon which Mr. Lowen invited her husband to dine with him ; her husband said he must first go to Acton, then home, put up his horse, and then walk back thither : that, in his absence, Mr. Lowen expressed himself with much uneasiness for fear her husband should not come ; upon which she told him that he would certainly come according to his promise, if it did not rain much. Accordingly, soon after twelve o'clock, her husband came and was introduced in the parlour by Mr. Lowen, with the greatest seeming civility, where her husband set down his sword and cane in the corner of the room ; and dinner not being ready, he gave them an invitation to walk into the garden, to see his plants : that, having walked about half an hour, they went back into the house, and Mr. Lowen spoke to his wife concerning dinner. When the prisoner, deceased, and herself, went into the parlour, Mr. Lowen took her husband's sword, and drew it out a little way, and praised it, and asked who was his cutler, by which she imagined he wanted to buy a new one ; that her husband not suspecting anything, there not being the least sign of anger in the prisoner, nor ever any difference between them, stood looking up the causey with his hands behind, when Mr. Lowen, on a sudden, drew the sword quite out of the scabbard, and stamping with his foot, ran the sword into her husband's body, just upon the right pap. She immediately cried out murder, caught hold of the sword to disengage it from her husband's body, and, struggling with Mr. Lowen, got it out ; but he drew it through her hands, cutting her finger to the bone, and gave her husband another stab in the arm : that her husband, casting up his eyes went towards the door, to lean upon a rail ; she following him, crying out Murder, saying speak to me, my dear ; he only held up his hands, but could not speak ; she, with some help, got him into the house, where, having fetched two groans, he immediately expired : that in the interim, Justice Hawlly accidentally coming by, she informed him of the fact, saying, that a villain had murdered her husband.

Justice Hawlly and other witnesses deposed, that the prisoner being examined owned the fact, and that he designed to have done it before, and that all the concern he then had was, that he was afraid he had not killed him. The reason he gave for it was, that the deceased had been too friendly with his wife, and had often trod upon his corns, giving him no other satisfaction than begging pardon for it ; that he had been informed, that, in his absence, his wife lived in great splendor, kept

a great equipage, coach, chariot, and footman, which was deposed to be all false.

The prisoner in his defence said, that when he went from England which was about nine years before, he had solicited his wife to go with him, which she refused, and that he came to fetch her; that Mr. Lloyd had called him several names (but could not tell what they were), and had often trod upon his corns. He produced some persons who endeavoured to excuse the fact, by saying, that distraction had been incident to his family, and that they had often observed him to be much discontented. But the jury disregarding these allegations, found him GUILTY OF WILFUL MURDER; and he received sentence of death accordingly.

After his conviction, Lowen readily confessed his crime; he had, for a long time before, designed to kill Mr. Lloyd; but before his trial, and even some time after it, he seemed to doubt very much of that gentleman's death, saying, it was impossible he should have died of the wounds he gave him. But when he was at last convinced that the gentleman was really dead, he then appeared sensible he had committed a base and heinous murder, and expressed great sorrow for it.

After his condemnation, he seemed to apply himself earnestly to his devotion, in which he was directed by two clergymen.

At the place of execution, he delivered a paper to a friend, containing his last speech to the world in German; the translation of which was as follows:—

“It is already known to the world for what reason I am now brought to this place, and am to suffer this shameful death, viz., for my having shed innocent blood. I acknowledge the fact, and confess my fault, and rest satisfied in the just sentence passed upon me, it being agreeable to the laws of the land, and the command of God, ‘That whosoever sheddeth man's blood, by man shall his blood be shed; for God made man after his own image.’ I was born of honest parents, my father was an Englishman, and my mother a native of Germany. I was educated from my youth in the Protestant religion. I declare before God and man, that I always had an aversion to actions of this kind, and have taken great care in all the course of my life, to avoid them; and though I often had the opportunity of taking away the life of my adversaries in ungodly duels and quarrels, yet I take God to witness, as a dying man, I never was guilty of any murder before this, for which I justly suffer. I am therefore the more grieved now, that I have been moved to so great a passion,

as to study revenge, by the instigation of the devil and sinful jealousy, which made me think (as I was persuaded by Mr. Crusras) that my wife was married in my absence with the deceased. This is the unhappy thing that brought me to the commission of this horrid sin, which I heartily bewail with tears, and I do submit to my just punishment. I am deeply sensible how greatly I have offended Almighty God, and therefore humbly implore his pardon and forgiveness, and that my sinful soul may be washed from my sins in the precious blood shed by my Redeemer, which speaks better things than the blood of Abel; and having the promises from the word of God, and his own oath, that, whenever a sinner truly repents, and turns to him, he is willing to receive and forgive him, herein are the only hope and comfort of my departing. I likewise most humbly beg the pardon of her most gracious Majesty, Queen Anne (whom God bless); and I publicly ask pardon of the widow of the deceased Mr. Lloyd, as I have done already, by a letter which I have left unsealed with Mr. Rup, minister of the Savoy, &c., to send it to her, hoping she will, as a Christian, forgive me, as we all hope for mercy and forgiveness from God, through the blood of Christ. In like manner, I ask pardon of my dear wife, who has been many ways injured by this sad occasion; and I sincerely declare, that I am fully satisfied of her innocence, and that I was jealous without a cause; and I do not in any respect ascribe to her the cause of my misfortune. I truly love her, and assure the world, that I have never been married to any other woman; and I pray heartily for her prosperity and happiness, both of soul and body. Lastly, I desire all good people, for God's sake, earnestly to pray for the salvation of my poor soul; and I exhort all to take warning by my sad misfortunes, that they would not give way to jealousy, anger, revenge, or such like passions; but resist the temptations of the devil, the world, and the flesh, with constant and devout prayers to God, and forgive their enemies, and pray for them. All which I heartily and sincerely do, as I hope God will forgive me for Christ's sake."

After Mr. Lowen had written this, he had the consolation to receive an answer to the letter he mentioned, in which Mrs. Lloyd said 'That she forgave him, and prayed that God would forgive him also, and have mercy upon his soul.'

## THE MARQUIS DI PALEOTTI'S CRIME.

FERDINANDO, Marquis di Paleotti, in Bologna, was the representative of a very ancient and eminent Italian family. He was also connected by birth and alliance with two noble English houses. Through his mother he descended from Sir Robert Dudley, son of the famous Robert Dudley, Earl of Leicester, the favourite of Queen Elizabeth. His sister was the wife of the celebrated statesman, Charles Talbot, twelfth Earl and only Duke of Shrewsbury. The Duke after he had left the Church of Rome, and joined the Whig party, and had risen to high honours under William III., went, in consequence of ill health, to travel abroad in 1700. While at Rome, in the course of his tour, he was a frequent guest at the house of the Princess Carpigni, and he there met and fell in love with Adelhida, daughter of the Marquis di Paleotti, and then the widow of a Swedish count. This lady, the sister of the unfortunate subject of this trial, was married to the Duke at Augsburg, in Germany, where she made an abjuration of the Catholic faith, and whither she had followed her noble lover that the nuptials might be celebrated in a Protestant country. After the marriage, the Duke and Duchess came to reside in England. Her brother, the Marquis di Paleotti, at the peace of Utrecht, resigned his Colonelcy in the Imperial army, and came to this country to visit his sister. Here he unfortunately entered into a course of extravagance and dissipation; he was attached to gaming, and he soon ran in debt for considerable sums. His sister paid his debts for some time, till she found it a burdensome and endless task. Though she at last declined to assist him he continued his former life till he was imprisoned for debt; but his sister privately procured his liberty, and he was discharged without knowing who had conferred the favour on him.

After his enlargement, he continued his vicious habits, and being one day walking in the street, he directed his servant, an Italian, to go and borrow some money. The servant having met with frequent denials, declined going; on which the Marquis drew his sword, and killed him on

the spot. This happened about a month after the death of the Marquis's brother-in-law, the Duke. Paleotti being instantly apprehended was committed to Newgate.

He was tried on the 11th of Feb. 1718, at the Old Bailey for the murder of his servant John Niccolo, otherwise John the Italian. The main evidence was as follows :—

John Johnson deposed, that being at his master's (Mr. Bellasis) door in Lisle-street, between nine and ten o'clock at night, he saw the marquis and the deceased pass by, and heard Niccolo say, *tous le jours*, and having passed him, he perceived the prisoner pursue the deceased with something in his hand held up, and heard Niccolo cry out, *garde, garde, garde*, near ten times, and then he took hold of a post, and the marquis walked on with something under his arm, but whether stick or sword he could not say positively, but he believed it to be a sword; and the marquis being gone past him, Niccolo never spoke more, but fell to the ground: then that the marquis took to his heels and made up Gerrard-street, upon which he and Thomas Corbridge, who came upon the outcry, examined the street, and were positive that there was no person in the street at that time but the marquis and Niccolo, and himself knocking at his master's door: and that there being some lights reflecting, and himself in the dark, he had so perfect a view of the marquis's face, that he was sure he was the very same person, and swore positively to it. He added likewise, that as well as he could then distinguish, he had on a red coat.

The next evidence was Thomas Corbridge, who deposed, that as he was knocking at a door in Leicester-street, he heard an outcry, which he took to be murder; and running to Lisle-street, he saw a person of the same stature of the marquis pass by him, but he could not swear to his face, but by the stature and make of his body (which was pretty remarkable, he being a tall man), he did verily believe it was the marquis; that seeing the man dead, they looked and saw no person in the street, at that time but the marquis, the deceased, and themselves.

Benjamin Forster deposed, that he hearing an outcry, as he was at home in Lisle-street, ran out, and that there was no person to be seen in the street, but a gentleman who came down the street, keeping the coach-way, who had either a sword or stick under his left arm, and his right hand upon it, and was in red clothes; and that as he passed along hastily, he turned back several times, looking behind him as it were, to

see if any person followed him, and turned up Gerrard-street ; that by his stature and shape he verily believed the marquis to be the person ; that then he and another stepping to the deceased found him dead, and opened him to find his wounds ; and examining his pockets they found some papers, by which they discovered he belonged to the Marquis Paleotti.

William Spicer deposed, that he living at St. James's kept a cutler's shop, and that the marquis had for some time been his lodger, and that he was always wont to come home pretty late, and have a supper and much attendance, his room illuminated, and a fire in it ; but that night he did not see him come in ; but was told by the maid, who went up stairs between ten and eleven o'clock, that the marquis was in bed, though no person in the house knew he was at home.

Mr. Spicer deposed, that the next morning the marquis got out of bed, and knocking he went up, and when he came, he asked him for his man Niccolo ? to which he replied, he did not come in that night ; and that just about that time, one Mr. Belin came and told the marquis that Niccolo was found murdered ; upon which in a sort of a hurry of mind, he went to dress him, and called for his grey clothes, which he fetched him ; then he dressed himself and went out ; and, as it appeared, went to the Bishop of Salisbury's (very probably thinking to find sanctuary in the bishop's house, as in a church or cloister in some Catholic countries), where it is reported he behaved himself so rudely, making a sort of riot, that his sword was taken from him, and sent to Justice Gore's ; which sword was produced in court by John Martin, the constable, who had received it of Justice Gore.

The marquis when he came to make his defence, having an interpreter allowed him (sworn for that purpose), declared his total innocence as to the murder of John Niccolo, saying, he had no ill-will against him, nor had any cause ; and, if he had, he had another way of punishing him, which was by martial law, he being his servant, and a soldier of his own troop. He then owned they did go out together in the morning ; that they went away to the other side of the water, and coming back in the evening, went to a tavern near Lincoln's-inn-fields, and supped about eight o'clock ; that they went away together, and Niccolo went along with him as far as his house, and asked him at the door to let him step somewhere, and he would return presently ; so he went to bed without Niccolo's putting him to bed, and had never seen him since.



His defence being contradictory, the Jury brought him in guilty of wilful murder, on the Coroner's inquest, and the statute of stabbing; and he received sentence of death. After his condemnation he behaved in a refractory manner to several persons that came to him, and even to a priest of his own persuasion, who was sent to him to prepare him for death.

He was conveyed from Newgate to Tyburn in a mourning coach, betwixt six and seven o'clock in the morning, March 17, 1718, where he suffered the sentence of the law.

The wretched marquis while preparing for his doom, gave a singular instance of the haughtiness of his disposition. Some other culprits were to have been executed with him, but he petitioned the Sheriffs that he might be allowed to die before them and alone, as he could not bear to be defiled by coming in contact on the gibbet with criminals of the vulgar class. The officers of justice granted his extraordinary request.

## THE FORGERY UPON THE DUCHESS OF GORDON.

THIS trial is mainly curious in its exhibiting one of the most striking instances on record of the discovery of a plot artfully contrived to effect, by judicial means, the ruin and death of an innocent man. The peeress, whose name is brought into the transaction, in consequence of her acceptance being forged, was the Lady Henrietta Mordaunt, daughter of the celebrated general, Charles, Earl of Peterborough, and wife of Alexander second Duke of Gordon, to whom she was married in 1706. The case was this :—

In the beginning of May, 1726, it was discovered that one Petrie, a town-officer in Leith, held the Duchess of Gordon's bill for £58, which had been delivered to him, blank indorsed, by one Mrs. Macleod, as a security for £6, for which sum her husband had been laid in prison. The bill was drawn by George Henderson, accepted by her Grace, indorsed by George Henderson, the drawer, a merchant of repute, to Mrs. Macleod, and blank indorsed by Mrs. Macleod; and in virtue of this blank indorsement, Petrie, the town officer, held it. The holder of the bill was apprehended and brought before the magistrates of Edinburgh; in a few days after, Mrs. Macleod and Mr. Henderson were also brought before them. It was manifest that the Duchess of Gordon's acceptance was a forgery, but the point in dispute was, whether this forgery was contrived by Mr. Henderson, the drawer and indorser, or Mrs. Macleod, the indorsee.

Upon the 5th of May, Petrie was brought before the magistrates, and told the manner in which he came by the bill. Henderson was at the same time brought before them; he denied all knowledge concerning it. Mrs. Macleod was apprehended on the 7th, and examined, and she and Henderson being confronted with each other, the former judicially declared, that the bill, and other deeds challenged, were written by Henderson, who again protested his ignorance of them. Upon which, Mr. Henderson and Mrs. Macleod were committed close prisoners.

At the trial, John Gibson, wright in the Canongate of Edinburgh, deposed, that he knew Mr. Henderson then at the bar, having seen him several times, and been once in company with him. He said that, on the 3rd of May last, about nine at night, as he was going down the Canongate, he met Mr. Henderson and Mrs. Macleod, who went along with him to the deponent's house ; he there saw Mr. Henderson sign the obligation to Mrs. Macleod now exhibited ; the deponent read it over, and signed as witness to Mr. Henderson's subscription, and the deponent's two daughters and Archibald Dempster were present. Part of this deed was written before the deponent saw it, but the last part of it, viz. from the following words, "before these witnesses" downwards, was written with Mr. Henderson's own hand in the deponent's presence. They staid in his house almost an hour ; and, during this time, Mr. Henderson repeatedly desired of Mrs. Macleod "that she should delay and keep herself quiet till Saturday, and she should have her money," which she refused to do unless he signed the obligation. Mr. Henderson, Mrs. Macleod, and the deponent, then went down the Canongate together. When they were before Deacon Lauchlan's house, Mrs. Macleod told Mr. Henderson she had intimated the bill to the Duchess' gentleman, whereupon he, Henderson, clapped upon his breast and said, "O, good God, that is all wrong, why have you done so?" and upon this he immediately left them. Deposed, that Mr. Henderson had on dark coloured clothes and a black wig such as he now wore. And, being interrogated if he knew one David Household, alias Cameron ? Deposed, he knew no such person.

Archibald Dempster, servant to James Aitkin, wright, deposed that on the 3rd of May last, after nine at night, he was sent for by John Gibson, the preceding witness, to his house. He found there Mr. Henderson, Mrs. Macleod, Gibson, his wife, and two daughters. Henderson was then writing a paper which the deponent saw him subscribe ; Gibson signed as witness to the deed, and desired the deponent to do the same. He hesitated lest it might be the cause of his afterwards being taken from his work, or of otherwise being brought into trouble. But Mr. Gibson said, it was no more than an obligation which Mr. Henderson was giving Mrs. Macleod for some money, and that he would pay against Saturday, and the deponent would not get into trouble about it ; upon which he signed as witness and then went immediately to his master's house. Being interrogated, deposed that he never saw Mr. Henderson before that

night nor since, except once about three weeks after, when he, Mr. Henderson, was brought before the magistrates of Edinburgh. He thought Mr. Henderson then at their Lordships' bar was the same person whom he saw at Mr. Gibson's, and afterwards before the magistrates.

Catherine Gray, servant to Alexander Hope, tailor in Canongate, deposed, that she had frequent occasion of seeing and knowing George Henderson at the bar, and particularly, on the 3rd of May last, on which the Deacons of the corporations of the Canongate were chosen : she saw the said George Henderson, prisoner, about nine o'clock at night, coming up the Canongate in company with Mrs. Macleod, the other prisoner ; and a little above the Canongate cross she saw them meet with John Gibson ; and the deponent, having asked Mrs. Macleod, if she had got payment of her money due to her by Mr. Henderson ? the said Mrs. Macleod answered, that she was just going to get security for it. Being interrogated for Mr. Henderson, she deposed, that she did not know, and to her knowledge, never saw the person named David Household.

William Petrie, town officer in Leith, deposed that on the 5th of February last, Mrs. Macleod delivered a bill to him for £58, which was drawn by Mr. Henderson, and accepted by the Duchess of Gordon, indorsed by Mr. Henderson to Mrs. Macleod, and blank indorsed by her. She gave this bill to the deponent in security for £6 1s., which he advanced to her in order to relieve her husband, Mr. Macleod, out of prison. Deposed, he knew nothing as to the verity of the subscriptions farther than Mrs. Macleod said it was a true bill. To the best of his remembrance she said the cause of her getting that bill, was tea and other goods she had furnished Mr. Henderson. Deposed, that about three years ago, Mrs. Macleod delivered to him in security of a debt she owed him, a bill for £38 or £40 drawn in the same manner by George Henderson, and accepted by the Duchess of Gordon, and that Mrs. Macleod paid him punctually the sum she had borrowed upon the pledge of this bill, and took up the same ; and she made use of this as an argument for the deponent's advancing her the £6 upon the bill produced in process. The deponent did not demand payment of the bill from the Duchess of Gordon, for he was prevented from doing so during the whole month of April, by Mrs. Macleod telling him, that the Duchess was then occupied with her devotions, and that her gentleman, Mr. Gordon, was in the North, upon whose return the bill would be paid. She added that she had been to

wait upon her Grace, had been kindly entreated, and had got a glass of some liquor out of the Duchess's hand. At last, the deponent became suspicious about the verity of the bill, and he told Mrs. Macleod, that, unless she got a letter from Mr. Henderson, declaring the verity of the bill he would protest it, upon which she brought him the letter from Mr. Henderson now produced in process, but the deponent desired her to get an obligation from Mr. Henderson for the amount, signed before witnesses ; she accordingly called on him, and shewed him the obligation now produced in process. This he thought happened a day or two before the deponent was apprehended by order of the magistrates, which to the best of his recollection was upon the 4th day of May last. It was about ten o'clock at night when she called and shewed him the obligation.

Alexander Nicolson, tailor in Edinburgh, being specially questioned, whether Mrs. Macleod at any time promised him any thing to be a witness in this cause, deposed that about eight days after he was examined before the magistrates, the deponent having occasion to be in the tolbooth of Edinburgh, Mrs. Macleod whispered to him, that it should be better than £4 sterling to him, if he would depose that he had carried a message from Mrs. Macleod to Mr. Henderson to come to her, that he came accordingly, and the deponent saw him deliver to Mrs. Macleod an accepted bill by the Duchess of Gordon ; but the deponent answered, his conscience would not allow him to declare any such thing. Deposed, that he afterwards got a letter from Mrs. Macleod threatening him that in case he should declare any thing contrary to what he said before the magistrates, the King's advocate would put him in prison, and that he shewed the said letter to several and particularly to Mr. Henderson's agent, Mr. Donaldson, and that the deponent had since lost the said letter out of his pocket. That in February last, when he was working in Mrs. Macleod's house, he heard her railing against a maid-servant for want of some money, and that a man came into the room whom the deponent did not know nor remember, and that, when he was gone, Mrs. Macleod came to him, and said she had got a bill from him, and said it would be good money to her. Mr. Henderson at the bar being pointed out to the deponent, and asked if it was the man that was in Mrs. Macleod's house the time deposed ? he said he had not seen the said man now pointed out to him in Mrs. Macleod's house, either that or any other time. He thought the man who came into Mrs. Macleod's had on a dark coloured wig.

Captain Neil Macleod deposed, that he had a servant, one David

Household, a lad about seventeen years of age, who left his service at Michaelmas last, and whom he had frequently seen write. The letter from Henderson to Petrie, and the obligation by Henderson to Mrs. Macleod being shewn to him, he deposed, that he could not say any thing to the letter, but as to the other obligation, he said that to the best of his knowledge it was the hand-writing of the said David Household. He deposed, that Household was not of a slender make, that he wore his own black hair, and was about the head lower than Mr. Henderson ; but he had seen him since wearing a light coloured wig.

Patrick Innes, writer in Edinburgh, deposed, that Mrs. Macleod having shewn the deponent the obligation subscribed by Mr. Henderson, and produced in process told him, that the motive of Mr. Henderson indorsing the Duchess of Gordon's bill to her was that he might conceal an unlawful correspondence which he kept with one Helen Moody, a servant of hers, and carry the said Helen out of the country. Mrs. Macleod told the deponent this in the house of John Gibson, on the 4th or 5th of May. Being interrogated if he knew that Mrs. Macleod kept out of the way on account of this bill ? He deposed, that Mrs. Macleod absconded for three days, and told the deponent that the reason of her doing so was, that Petrie had a warrant to apprehend her, and that she expected payment before eight o'clock on Saturday night from Mr. Henderson, and that then she would give them all the tail of a long tow.\* The deponent went with Mrs. Macleod to one Doctor Smith, who was well acquainted with the Duchess of Gordon, and requested him to intercede with her Grace that she would pass from any ground she had for challenging the bill ; but this the doctor positively refused, upon which Mrs. Macleod said she was undone.

Mary M'Aulay, widow of Alexander M'Lellan, barber in Leith, deposed, that some few days after Mrs. Macleod was made prisoner, the deponent saw in her house one David Household, who told her that a few days before Mrs. Macleod was apprehended, he at her desire put on a coat of her husband's, and went with her to the Canongate, and in some house there he assumed the name of Henderson, and under that name subscribed a paper in presence of two witnesses, one of them a married man, and the other a young lad ; and he said it was on account of this paper that Mrs. Macleod was put in prison. He added, that the reason

\* The swing of a rope.

she gave for his putting on her husband's coat was that he might appear like Henderson—Household expressed his sorrow for what he had done, said he was not aware of his hazard, but now he was in danger of his life, and was resolved to fly the country; that he was afraid to cross at Leith, lest he should be apprehended, and would cross at Queensferry.—And the deponent believed that he fled accordingly.

The trial had proceeded thus far, neither party being able to produce more witnesses to support their mutual recrimination and defence, when the Lord Advocate represented to the Court, that as the evidence given must have established with their lordships a conviction of Mr. Henderson's guilt, the duty of his office required it of him to ask their lordships to pronounce a decree, finding the bill drawn upon the Duchess of Gordon to be forged by the prisoner Henderson, and therefore remitting him to the Court of Justiciary, that he might suffer a capital punishment.

The counsel for Mr. Henderson urged in his defence, that, notwithstanding the direct testimony which was given by several witnesses, of his having granted the obligation relative to the forged bill, yet having visited him in prison, and repeatedly examined him in private in the most solemn manner,—the simplicity, uniformity, and steadiness of his answers to the counsel's interrogatories, gave the latter if not a perfect conviction, at least a strong belief that Henderson was truly innocent. The counsel, therefore, requested of their Lordships, that they would not be hasty to embrace, nor resolute to conclude, a decided opinion of Henderson's guilt; for that even procrastination was not a fault, when the life of a man was at stake. And he entreated their Lordships to spare his feelings of the pain it would give them, to hear a sentence pronounced on almost the last day of a session, which was to be the foundation of a capital punishment being adjudged to a man, of whose innocence he still entertained a strong persuasion. The solemn and animated address of the counsel made a forcible impression upon the Court, and their Lordships delayed the cause till the next session.

During the vacation, a singular coincidence of circumstances occurred which was the means of vindicating Henderson's innocence, and of detecting a profound scheme of fraud, not less ingeniously contrived than dexterously executed.

The Lord Advocate, when going north to his house at Culloden paid a visit to Mr. Rose of Kilravock. Mr. Rose shewed his Lordship a house he was building; and, happening to miss one of the carpenters whom he

thought an expert workman, he asked the overseer what was become of him ? The overseer taking Mr. Rose aside, bid him take no further notice of this, for the young man, upon hearing that the Lord Advocate was to be at Kilravock, declared it was high time for him to leave the country ; and that he would immediately go to Aberdeen, and take ship for London. Mr. Rose communicated this to his Lordship, who asked the overseer the carpenter's name, and if he knew of any crime that the carpenter had committed ? The overseer answered, that the man's name was David Household and he suspected the crime was being accessory to some forgery. The Lord Advocate immediately dispatched a messenger to Aberdeen, who apprehended Household, and carried him prisoner to Edinburgh.

Upon the commencement of the winter session, Household being brought before their Lordships, and examined, deposed that in the beginning of the year, he at the desire of Mrs. Macleod wrote the bill produced in process, which she dictated to him, and he in particular wrote the name of George Henderson, both as drawer and indorser ; but the word Gordon, he did not write. At another time Mrs. Macleod carried him to a gardener's house without the Water-gate, at the foot of the Canongate, but, before taking him there, she put on him a coat belonging to her husband and a black knotted perriwig, and told him, that she was to bring him into the company of two honest men before whom he must personate George Henderson. The deponent did as she desired, and in the gardener's house at the Water-gate, she dictated to him a part of the obligation now produced. She then took him to a wright's house in the Canongate on the south side of the street, and there in presence of the wright and of a boy called Dempster, Mrs. Macleod dictated and the deponent wrote the remainder of the obligation, and subscribed it George Henderson in presence of the wright and of Dempster, who subscribed as witnesses.

The letter produced in process from George Henderson to William Petrie being likewise shewn to the deponent, he deposed, that he wrote it also at the desire of Mrs. Macleod, who dictated the same to him, and this happened before he wrote the obligation above-mentioned. Deposed, that after Mrs. Macleod was put in prison, a highlandman came to him and said, that he was sent by Mr. Macleod, Mrs. Macleod's husband to persuade him to abscond on account of the papers he had written ; this he thought unnecessary, as he wrote them at the desire of another, and was altogether ignorant of the import of the said writings,



but upon advising with some friends he was convinced of his danger, and he absconded.

John Winchester, clerk to the comptroller of the customs at Leith, deposed that he was intimately acquainted with David Household; that some time in May last the deponent went to see Household, who was then working aboard Captain Marsham's ship which was lying in Leith harbour; but was told that Household was not to be found. He called a second time, and the mate of the ship brought Household to him. The deponent asked what was the matter with him? He answered, that he was obliged to hide himself, for Mrs. Macleod had induced him one day to go to a house in the Canongate with her, and there to write out a bill for her for about £50 or £60 in presence of two witnesses, but the deponent did not remember what he said about subscribing the bill. Deposed, that he said to Household, he would be hanged for so doing, to which Household answered, he was resolved to fly; and added, that he had received a message from Mrs. Macleod's husband to abscond. The deponent asked him, if it was on account of this bill that Mrs. Macleod was put in prison? to which he answered, that it was the very same. The bill, letter, and obligation in process, being shewn to the deponent, he deposed that he was well acquainted with Household's hand-writing, and he believed the said deeds to be written by him.

Archibald Dempster, a preceding witness, being re-examined, and his former deposition read over to him, deposed that nobody instructed him as to what he was to say in that deposition, nor promised him any reward on that account. Being confronted with Henderson at the bar, and with David Household, and being desired to look narrowly upon the said David, and upon George Henderson at the bar, in order to declare upon oath which of the said two was the person who wrote and subscribed the obligation in the house of John Gibson, mentioned by the deponent in his former oath, he said that he did believe that the said person was David Household, and not George Henderson.

The second part of this strange drama being thus performed, and the "plot detected," it remained now for public justice to bring the matter to a catastrophe. Upon the 8th of December, the Lord Advocate represented to the court, that it was manifest that the Duchess of Gordon's bill was a forgery: that it was evident from the proof that Henderson was innocent of the forgery, who therefore ought to be acquitted; and that Mrs. Macleod was guilty of the same, as well as of counterfeiting the letter and

tion produced in process. This, his Lordship said, was established by Household, who, at the desire and by the contrivance of Mrs. Macleod, actually forged the deeds ; by Dempster, who, in his second deposition, ingenuously and satisfactorily accounted for the mistake into which he was led in his first, by the artful contrivance of Mrs. Macleod ; by comparing the deeds produced with the hand-writing of Household, taken down in their presence ; and by the evidence which Henderson led of an alibi. He added, that she had formed a malicious intention to hang her neighbour, and it was but just she should fall into her own snare. Upon the whole, his Lordship observed that, by her artful and horrid contrivance, Mrs. Macleod had well nigh made “ an innocent man suffer death. That this contrivance was, by the good providence of God, discovered ; and concluded, that, therefore, the said Mrs. Macleod was guilty of forgery, and ought to suffer the pains of death.” The Solicitor General added, “ that there was such a horrid design, and so artfully laid, that, at first, he firmly believed Henderson guilty ; nay, and could appeal to all, if Household had not been apprehended, they had not condemned Henderson.”

The Court found that Mrs. Macleod was GUILTY of the said forgeries ; and they reduced the deeds, remitted Mrs. Macleod to the Court of Justiciary, acquitted Mr. Henderson, and dismissed him from the bar.

Mrs. Macleod was then served with a criminal indictment at the instance of his Majesty's Advocate, setting forth, that the crime of forgery, for the using of forged deeds, was punishable with “ death and confiscation of moveables, and other pains of law ;” that, nevertheless, Mrs. Macleod had been guilty of all, or one, or other, of these crimes, in as far as she had forged a bill upon the Duchess of Gordon, &c. &c. That the Court of Session had pronounced a sentence, declaring the bill, &c. to be forgeries, and that the prisoner was guilty of the same, and therefore remitting her to the Court of Justiciary : and that the extracted, *i.e.* authenticated, decree of the Court of Session, was lodged with the clerk of the Court of Justiciary. “ All which, or any part thereof, being found proven against her,” she ought to be punished with the pains of death.

The prisoner and the public prosecutor were heard by counsel. It was objected for her that forgery, by the law of Scotland, did not infer a capital punishment ; that she was not accused of having actually committed the forgery, but only of being *art and part* ; that she had not used

the bill with an intent to defraud, but merely as a fund of credit for a small sum of money, which she meant honestly to repay ; and that the decree of the Court of Session was neither to be held as determining the relevancy of the indictment, nor as *probatio probata*, or evidence not to be controverted of the prisoner's guilt. Informations for both parties were also lodged by order of the Court. But, as the defences stated for the prisoner were over-ruled, and as these general points of law and of form are now established by subsequent practice, it is needless to state the arguments which they contained.

The decree being read, the Court ordered the assize instantly to inclose ; the jury returned a verdict, unanimously finding the indictment proved, and the prisoner "guilty, art and part, of the crimes libelled." The Court adjudged the prisoner to be hanged on the 8th of March.

Mrs. Macleod went to the place of execution dressed in a black robe, with a large hoop, a white fan in her hand, and a white sarsnet hood on her head, according to the fashion of the times. When she came upon the scaffold, she put off the ornamental parts of her dress, pinned a handkerchief over the breast, and put the fatal cord about her neck with her own hands. She persisted to the last moment in the denial of her guilt.

## MAJOR ONEBY'S DUEL.

THE Onebys were an old and highly respectable Leicestershire family. John Oneby, Esq. the grandfather of the unfortunate Major of this trial, was Lord of the Manor of Barwell, co. Leicester, and a descendant of the Onebys or Ondebys of Ondeby and Hinckley. His son John Oneby, an eminent solicitor, married Kerenhappuch, daughter of Henry Turvile, Esq. of Aston Flamvile, and niece of Sir Nathan Wright, Lord Keeper of the Great Seal from 1700 to 1705. Major Oneby was a son of this marriage.

The gentleman, Mr. William Gower, whom Major Oneby killed, was the scion of an ancient and honourable Catholic family. He was the only son of William Gower, Esq. of Colmers and Queenhill, co. Worcester, by his wife Ellen Coyney, the heiress by devise of the estates of her family, the Coyneys of Weston Coyney, in Staffordshire. William Gower, the victim of the duel, became in right of this lady, his mother, lord of Weston Coyney; but after his premature death and pursuant to his will, the lands eventually reverted to the male representative branch of the Coyneys.

To return to Major Oneby. This eccentric person was born at Barwell, co. Leicester, about the year 1677, and was placed as clerk in the office of an attorney of note, but his aspiring and haughty spirit induced him to look much higher; and his parents found they had not properly consulted his inclination. The custody of the Great Seal having been committed to his relative Sir Nathan Wright, application was made for some employment more congenial to the young man's tastes. The only appointment Sir Nathan offered was that of train bearer, and this Oneby accepted and held for a short time, but he at length entered the army, and a commission having been obtained, he served with repute in several of the Duke of Marlborough's campaigns in Flanders—wherein he received many wounds. At Bruges he fought a duel with a Saxon colonel, whom he killed, but was

honourably acquitted by a court-martial that tried him. At Port Royal, in Jamaica, he afterwards fought a Lieut. Tooley, and both were severely wounded. Oneby soon recovered, but Tooley died, after having languished eight months. When he had served several years in the army and had risen gradually to the rank of Major in Honeywood's dragoons, Oneby found himself, by the peace of Utrecht, in the number of disbanded officers ; and returning to England, gained a disgraceful subsistence by dexterity at gaming. The frauds he is supposed to have committed were numerous. In 1726, in one of his evening parties, at the Castle tavern, Drury Lane, happened the dreadful event which terminated his career. His companions at the same time were Mr. William Gower, of whom we have made mention, Mr. John Rich, the well-known theatrical manager, and ten other gentlemen. A quarrel ensuing, the result was an immediate rencontre in which Mr. Gower fell, and Major Oneby was tried for the murder.

The trial took place at the Old Bailey in 1726, before Mr. Baron Hale and Sir William Thompson, Knt., Recorder of London. The facts of the case are fully given in the evidence of the witnesses, as follows :—

Thomas Hawkins.—On the 2nd of February between nine and ten at night, Mr. Blount, the deceased, the prisoner and myself, went from Will's coffee-house to the Castle tavern in Drury Lane, where, in about half-an-hour Mr. Rich, came to us. After the fourth bottle, the prisoner called for a box and dice ; the drawer said they had none in the house ; " Why then," says the prisoner, " bring the pepper-box." The drawer brought it, and dice were laid upon the table : but I don't know by whom. We played low, nobody setting above half a guinea, and yet I had no inclination to game, and especially to set the prisoner : and therefore after a trifling loss I declined the play. The prisoner appeared disgusted at it, and asked me why I refused ? I told him I should use my own pleasure, whether it was agreeable to his humour or not. The rest continued playing. The deceased lost thirty shillings. Mr. Rich said, " Who will set me three half-crowns ? " Upon which the deceased took something out of his pocket and laid it on the table, but concealed it with his hand and said, " I 'll set ye three pieces ; " and then taking his hand away, we saw three half-pence. This was not offered to the prisoner, but he appeared to be much affronted. He said, " That is very impertinent, to set three half-pence." The deceased said, " What do you mean by impertinent ? " And the prisoner replied, " You are an

impertinent puppy ; ” and presently snatched up a bottle, and threw it at the deceased’s head, and it beat some powder out of his wig but did him no hurt. He, in turn, tossed a glass or a candlestick, I can’t tell which, at the prisoner, but it did not reach him. They both rose up together, and went to their swords, which hung up in the room. The deceased being quickest, got his sword first, and drew it, and stood still in a posture of defence at a good distance from the prisoner, who was advancing and was drawing his sword to meet him ; but Mr. Rich stepped in between, and prevented him. Then the deceased threw away his sword, and they all sat down again and drank for about half-an-hour ; when the deceased offering his hand to the prisoner, said, “ We have had words, Major, and you were the aggressor, but let us agree.” The prisoner answered, “ No, damn ye ! I ’ll have your blood ! ” And then turning to me he said, “ Hawkins, you were the occasion of this.” “ Why then,” says I, “ if ye have done with him and have anything to say to me, I am your man, and I ’ll see you out.” “ No,” says he, “ I have another chap first.” In about half an hour after this, which was near three in the morning, the company broke up. I went out of the room first, and Mr. Blunt and Mr. Rich were next after me. When I came into the street it rained, and I ran under a pent-house where I stood a little while, but not having a chair ready and seeing none of the company come out, I returned to the room, where I found the deceased wounded, and leaning in a chair in a languishing condition. He died the next morning. I knew him intimately, and I don’t believe that there was a sweeter tempered man in the world.

John Rich.—I, the prisoner, the deceased, and some others, went together to see the new tragedy of Hecuba ; we sat in the pit. The deceased and the prisoner appeared to be good friends all the time of the play, and as soon as it was done I left them, but met them again at the Castle tavern in about half an hour. The prisoner and I called for a box and dice, which not being to be had he called for a pepper box, and it was brought ; I saw dice lying upon the table, but don’t know how they came there. I said, “ let us play low.” Some words passed between the prisoner and Mr. Hawkins. I laid down three half-crowns. The major set me, I threw. Seven was the main, six the chance. The deceased put down three half-pence against me, and said, “ here, I ’ll set ye three pieces.” The prisoner damned him, and called him an impertinent puppy. “ Sir,” said the deceased, “ I am not afraid of ye, and he

that calls me a puppy is a scoundrel." At these words, the prisoner threw a bottle at him. It brushed his wig as it passed, and he in return tossed a glass. They both got up together ; but the deceased being nimblest jumped on the table, and reached his sword first ; and then stepping down he drew, and stood ready to defend himself, but made no offer to push. In the mean time the prisoner took down his sword and cane which hung together, and there being the table and a chair between them, he came round the table, and was going to engage with the deceased ; but I stepped between them, told the prisoner, who was drawing his sword, if he made a lunge it must be through my body, which, as I was unarmed, would be wilful murder. The deceased then threw away his sword, and they both sat down again. The deceased put his hand forward and said, " Come, major, let us be reconciled, words in heat may be forgot and forgiven." The prisoner answered, with an oath, " You lie—I'll have your blood !" And then, turning to Mr. Hawkins, he said, " this is all along of you." Mr. Hawkins answered, " then I am your man ;" and the prisoner replied, " no, I have another chap to deal with first." When we all got up to go, the prisoner hung his great rug coat upon his shoulders, and I think buttoned it in one or two places. Mr. Hawkins went out first, Mr. Blount next, the deceased followed him ; I, the deceased, and the prisoner, came last : but he was hardly out of the room, when he called to the deceased, " Hark ye, young gentleman, a word wi' ye." The deceased turned back ; they both re-entered the room. The door was immediately shut fast. I heard a clashing of swords, and a loud stamp on the floor which I guessed was made by the prisoner, he being a very heavy man. Mr. Blount and I stepped back, and endeavoured to get in ; we could not readily open the door, but the drawer coming to our assistance we made an entrance, Mr. Blount first, and I close behind him. The prisoner was then next to the door, and standing with his sword drawn in his right hand, the point of it being towards the deceased, whom he held by the shoulder with his left. I think the deceased had then no sword in his hand, at least I saw none ; and I soon afterwards found it close to the wainscot behind the folding of the great oval table. It was bloody and greasy four or five inches from the point. The deceased closed with the prisoner, but in such a manner as if he rather fell towards him through weakness, than otherwise, which makes me think the wound was given him before we came in. We put him into a chair and sent for a surgeon. As I held up my hand to part them I

felt a little prick through my coat by the prisoner's sword ; but I believe it was done accidentally. Mr. Blount at the same time clapped his hand on his stomach and said he was dangerously wounded, but I am ignorant by what means. I told the prisoner when we came out of the room, that I was afraid he had killed the deceased. "No," says he, "I might have done it if I would, but I have only frightened him. But suppose I had killed him, I know what I do in those affairs ; for if I had killed him to-night in the heat of passion, I should have had the law on my side ; but if I had done it at any other time it would have looked like a set meeting, and not a rencontre." I advised him, however, to make off for fear of the worst. I asked the deceased on his death-bed if he received the wound fairly ? He answered, faintly, "I think I did—but—I don't know—what might have happened—if you—had not—come in."

Michael Blount (no doubt the then Mr. Blount of Maple Durham)—From the play we went to Will's, and thence to the Castle, where we were very merry and friendly, till the dice were called for. We played low, but Mr. Hawkins soon declined ; upon which the prisoner said to him, "Why do you come into company, when you won't do as others do ?" Mr. Hawkins answered, "Don't trouble yourself about me, I'll do as I please." The deceased set three half-pence ; the prisoner said it was damned impertinent ; and some other words passing he flung a flask at the deceased, who in return tossed a glass or a candlestick. They took their swords but were prevented from engaging, and so they sat down again ; the deceased offered his hand to be reconciled, upon which the prisoner gave him very ill language, and swore he would have his blood. As this made me apprehensive that their quarrel would break out again the next day, I invited the company to dine with me, in hopes to bring on a reconciliation, and prevent future mischief. The prisoner answered my offer with, "No, I'll dine with none of ye." "Are ye angry, sir," said I. "Have ye anything to say to me ?" "Or me ?" says Mr. Hawkins. "Or me ?" says Mr. Rich. "No," he had nothing to say to any of us. This was about two or three in the morning. And after we were all come out of the room I heard the prisoner call the deceased back ; and they were no sooner got into the room again, but the door was flung to with great violence, and I heard the clashing of swords. When I got in, which was with much difficulty, I did not see that the deceased had any sword in his hand, but he was sinking forward ; and I, by going to assist him, received a wound in my stomach,



which I was afraid was mortal, but I cannot tell how or by whom it was given, though I think it could not be made by the deceased because he had no sword ; and besides, was not in a condition to do it. A surgeon being in the house, gave me his immediate assistance.

Mr. Shaw, the surgeon.—I found the deceased languishing in a chair. His intestines appeared at the wound, and by being exposed to the air began to mortify. When I had dressed him, I sent him home, but the next day I found a second rupture of the intestines. He died soon after, and that wound was the cause of his death.

Prisoner.—A wager was laid betwixt Mr. Rich and Mr. Blount, concerning Mr. Mills' acting the part of Cæsar in the play of Julius Cæsar, and it was lost by Mr. Blount. After this a box and dice were called for, but not by me ; the drawer said he had dice but no box ; upon which somebody called for a pepper-box. I flung a main at one shilling and passed it about. Mr. Hawkins refusing, I said, " I thought there was as good fellowship in a little play, as in altogether drinking : " then we played for half-a-crown or three shillings, and when the box came round again the rest likewise refused to play ; at last the deceased offered to set three half-pence, which I said was very impertinent. He called me rascal. " You impertinent puppy," said I, " what do you mean by that ? " Upon which he threw a glass at my head and drew upon me. I told him he acted basely in drawing upon me, when it was he that gave the affront. After this I put on my great coat, and was going out. Mr. Hawkins had slipt away, and the rest being gone out of the room the deceased pushed the door to and drew upon me, and wounded me in the knee, and cut my fingers. I parried and closed with him ; he endeavoured to stab me in the back ; at which time Mr. Blount came in, and received a wound in his stomach, which must have been by the deceased's sword.

John Barnes, the drawer.—I threw the prisoner's great coat over his shoulders as he was going out. Mr. Hawkins came out first, and asked if his chair was at the door ? I said, " Yes." Mr. Blount followed, and I went down to unbar the door. The rest of the company not coming, I went back and met Mr. Rich ; he bid me open the door ; I thought he meant the street-door, and was turning that way again ; but he swore at me and told me the other door. I opened it, and went in first, and the deceased and the prisoner were both with their swords in their hands pointing towards each other. The deceased closed with the prisoner in a

manner as if he was rather falling than pushing ; and the prisoner with his left hand had hold of the deceased, who, as soon as we parted them was so weak that he could not stand. I did not see him bleeding when I came into the room, though I cried out to the prisoner, " For God's sake what are ye doing ?"

Prisoner.—" Did not you see the deceased offer to stab me in the back ?"

Barnes.—" No."

Mr. Burdet, a surgeon.—The next day in the evening the prisoner sent a coach to my house with a letter for me, informing me that he had been wounded in a rencounter, and desiring me to come to him. I went, and found him in bed at the house of Mrs. Gardiner, in Dean-street, near Red Lion square, where he had concealed himself. He had one wound below his knee an inch and a half long, two of his fingers were cut in the first joint, and he shewed me three or four holes in his dress ; but none of his wounds were above a quarter of an inch deep, and that in his leg had just raised the skin.

Mrs. Gardiner.—The prisoner came to my house about two o'clock in the morning : he was bloody, and upon searching him I found a wound as deep as my finger, and I dressed it for him.

Court.—The evidence is plain that the prisoner gave the first provocation ; and it is not denied that he afterwards killed the deceased. The question is, whether from the time the prisoner threw the bottle to the time the deceased received the wound, there was any reconciliation, if there was not, I think it can be no less than murder.

The jury found there was no reconciliation ; but not being satisfied as to the murder they agreed on the following special verdict :—

" That upon the 2nd day of February, the prisoner and the deceased were in company together with John Rich, Thomas Hawkins, and Michael Blunt, in a room at the Castle tavern in Drury Lane, in the county of Middlesex, in a friendly manner. That after they had continued thus for two hours, box and dice were called for ; the drawer said, he had dice but no box ; and thereupon the prisoner bid the drawer bring the pepper-box, which he immediately did : and then the company began to play at hazard, and after they had played some time, the said Rich asked, ' if any one would set him three half-crowns ?' Whereupon the deceased, in a jocular manner, laid down three half-penny pieces, and then said to the said Rich, ' I have set you three pieces,' and the prisoner

at the same time set the said Rich three half-crowns, which the said Rich won : and immediately after the prisoner in an angry manner turned about to the deceased, and said, ' it was an impertinent thing to set half-pence, and that the deceased was an impertinent puppy for so doing ; ' to which the deceased answered, ' whoever called him so was a rascal.' That thereupon the said John Oneby took up a bottle, and with great force threw it at Gower ; which bottle did not hit the said Gower, but brushed his perriwig as it passed by his head, and beat out some of the powder ; whereupon the deceased immediately after tossed a candlestick or bottle at Oneby but did not hit him with the same, upon which the deceased and the prisoner both rose up to fetch their swords, which then hung up in the room ; and the deceased drew his sword, but the prisoner was prevented from drawing his by the company ; and the deceased thereupon threw away his sword, and the company interposing they sat down again for the space of an hour. That at the expiration of an hour, the deceased said to the prisoner, ' We have had hot words, but you was the aggressor ; I think we may pass it over ; ' and at the same time offered his hand to the said John Oneby, to which the said John Oneby answered, ' No, damn you, I will have your blood.' They further find, that after the reckoning was paid by the deceased, Rich, Hawkins and Blunt, and all the company, except the prisoner, went out of the room to go home ; and the prisoner remaining alone in the room called to the deceased in these words, ' Young man, come back, I have something to say to you ; ' whereupon the deceased returned into the room, and immediately the door was flung to and shut, and thereby the rest of the company were excluded : and then a clashing of swords was heard, and the prisoner, with his sword, gave the deceased the mortal wound mentioned in the indictment, of which he died the next day. They further find, that at the breaking up of the company the prisoner had his great coat thrown over his shoulders ; and that he received three slight wounds in the engagement ; and that the deceased being asked, upon his death-bed, whether he received his wound in a manner, amongst swordsmen, called fair, answered, I think I did. That from the time of throwing the bottle there was no reconciliation between the prisoner and the deceased. And whether this be murder or manslaughter, the jury pray the advice of the Court, and find accordingly."

After this verdict, Major Oneby was remanded to Newgate, where he remained without judgment for two years, the judges not having met to

give their opinion. He at length became impatient of longer confinement, and therefore moved the Court of Queen's Bench that counsel might be heard on his case. The prisoner was therefore carried into court, by virtue of a writ of habeas corpus ; and the record of the special verdict being read, the bench, with great humanity, assigned him two counsel, a solicitor, and a clerk in court. Lord Chief Justice Raymond, and three other judges, presided a few days afterwards, when the major being again brought up, his counsel Sergeant Darnell, and Sergeant Eyre for the crown, were heard ; after which the Lord Chief-Justice declared that he would take an opportunity of having the opinion of the other judges, and then the prisoner should be informed of the event. The major, on his way back to Newgate, gave a handsome dinner at the Crown and Anchor Tavern in the Strand, to the person who had the custody of him ; and, seeming to be in high spirits on account of the ingenious arguments used by his counsel, entertained little doubt of his being discharged.

After a considerable time the judges assembled at Serjeants' Inn Hall to bring the matter to a decision. Counsel were heard again on both sides and the arguments lasted a whole day, during which the major was carousing with his friends in Newgate, and boasting of the certainty of his escape, as he had only acted in conformity with the character of a man of honour. In the midst of these delusive expectations, a gentleman called and told that eleven of the judges had decreed against him, which greatly alarmed him. Soon after the keeper of Newgate informed him he must double iron him, to prevent his making his escape ; and that he must be removed to a safer place unless he would pay for a man to attend him in his room. Oneby was shocked at this news ; and, having written several letters to the judges, and other persons of distinction, to which he received no answer, he began to be apprehensive that the most serious consequences would result from the crime of which he had been convicted.

At length the judges re-assembled again at Serjeants'-Inn Hall, and having there given their unanimous opinions, the sense of the bench was in the next term accordingly delivered to Oneby by Lord Raymond.

The effect of it was, that upon the facts detailed in the special verdict, all the judges were of opinion that the prisoner was guilty of murder ; he having acted upon malice and deliberation, and not from sudden passion. The main point on which the judgment turned, and was so declared to be, was the evidence of express malice, after the interposition of the company, and the parties had all sat down again for an hour. Under those circum-

stances the Court was of opinion that the prisoner had had reasonable time for cooling, after which upon an offer of reconciliation from the deceased, he had made use of the bitter and deliberate expression, that he would have his blood. And again the prisoner remaining in the room after the rest of the company retired, and calling back the deceased by a contemptuous appellation on pretence of having something to say to him, altogether shewed such strong proof of deliberation and coolness as precluded the presumption of passion having continued down to the time of the mortal stroke. Though even that would not have availed the prisoner under these circumstances, for it must have been implied, that he acted upon malice, having in the first instance before any provocation was received, and without warning or giving time for preparation on the part of Mr. Gower, made a deadly assault upon him.

On the Chief Justice's mentioning that Oneby said he would have the blood of Gower, the major solemnly declared that he had never spoken such words, and begged the interposition of the judges with his Majesty for a pardon. Lord Raymond told him it was in vain for him to deny the words, as they were returned in the special verdict; and that the judges could not interfere by an application to the king, but he must seek another channel through which to solicit the royal mercy.

A few days after this, sentence of death was passed on him, and he was ordered to be executed. His friends and relations exerted their influence to procure him a pardon, but their intercessions proved in vain. The accession of a new sovereign, George II., seemed to give the unfortunate major another chance of life, but on application his Majesty said that the judges having adjudged the prisoner guilty of murder the law should take its course.\* On the Saturday preceding the day he was ordered for execution

\* The severity of the king and his government towards the unfortunate Major Oneby may be satisfactorily accounted for. At the period of his trial the practice of duelling had increased to a frightful extent, and had grown into an enormous abuse. It consequently became necessary to put a stop to the evil by some signal example, and this case of Oneby, already a notorious duellist, afforded the opportunity. With regard to the accession of a new king, this in reality went against the major, for it was characteristic of George II., throughout his reign, that whatever his private feelings might be, he allowed no consideration to interfere with what he deemed a due and proper execution of the sentence of the law. With him, for instance, Lord Ferrers once convicted, had no chance of being spared.

Mr. Millingen in his able History of Duelling gives the following graphic account of the continual affrays in London about the beginning of the eighteenth century:—

“At this period the pit of the theatre became the constant *arena* of quarrels that led to duels. The young bloods of the day made it a point to go to the playhouse, for the

(July, 1729), he went to bed at ten o'clock, and having slept till four o'clock on Sunday morning, he asked for a glass of brandy and water, and pen, ink, and paper, and sitting up in the bed, wrote the following note:—

mere purpose of insulting females, and getting themselves involved in disputes that might increase their fashionable popularity. In 1820, Mrs. Oldfield, a celebrated actress, was performing in 'The Scornful Lady,' when Beau Fielding (the Orlando the Fair of the Tatler) insulted a barrister of the name of Fulwood, by pushing rudely against him. Fulwood expostulated with some degree of violence, upon which Fielding laid his hand upon his sword. The pugnacious lawyer drew, and gave his antagonist a severe wound in the body. Beau Fielding, who was then a man of above fifty years of age, came forward, and uncovering his breast, showed his bleeding wound to the public, to excite the compassion of the fair sex; but, to his no small disappointment, a burst of laughter broke forth from the audience. Fulwood, emboldened by his success with Fielding, repaired to Lincoln's-inn-fields Theatre, where he picked up another quarrel with a Captain Cusack, and then demanded satisfaction. They went into the fields, and the lawyer was professionally despatched by the soldier, and left dead on the ground.

" Ball-rooms, masquerades, theatres, the open streets, the public walks, bagnios, and coffee-houses, now became constant scenes of strife and bloodshed; Covent-garden and Lincoln's-inn-fields became the rendezvous for deciding points of honour; and at all hours of the night the clashing of swords might be heard by the peaceable citizens returning home, at the risk of being insulted and ill treated by the pretty fellows, and the beaux of the day. The system of duelling pervaded all classes, and even physicians were wont to decide their professional altercations at the point of the sword. Doctors Mead and Woodward fought under the gate of Gresham College; the latter slipped his foot and fell. 'Take your life,' exclaimed Dr. Mead. 'Any thing but your physic,' replied the prostrate Woodward.

" While personal meetings were then frequent, and often carried on in the most dishonourable manner, general frays were not uncommon. In 1717, after a levee, a large party of gentlemen were assembled at the Royal Chocolate-house, in St. James's-street. Disputes at hazard produced a quarrel, which became general throughout the room; a *melee* ensued, and as they all fought with swords, three of the party were mortally wounded. The affray was only terminated by the interference of a party of the Guards; who, as entreaties and commands were of no avail, knocked the most pugnacious of the combatants down with the but-end of their muskets. A footman of one of the party (a Colonel Cunningham), who was greatly attached to his master, rushed through the drawn swords; and seizing him round the waist, actually carried him away.

" In 1720, at twelve at night, about one hundred *gentlemen* were engaged in a riot in Windmill-street with swords and canes, when several of the party were desperately wounded. The watchmen sought to interfere, but were knocked down and barbarously ill-treated. At last a patrol of Horse Guards came up; and finding the rioters obstinate, rode through them, cutting at them with their swords. Some were killed, and several of them were so desperately wounded that fears of their recovery were entertained. The quarrel had begun between two chairmen. Such was the state of society in London, and of its police, at that period.

" A week after this outrageous breach of the peace, a Captain Fitzgerald, and three young men, met a lady in the Strand, returning from St. James's in a sedan-chair.

“ COUSIN TURVILE,—Give Mr. Akerman, the turnkey below stairs, half-a guinea, and Jack, who waits in my room, five shillings. The poor devils have had a great deal of trouble with me since I have been here.”

Having delivered this note to his attendant, he begged to be allowed to take his repose, that he might be fit for the reception of some friends who were to call on him. He was accordingly left, and a gentleman coming into his apartment about seven o'clock, and the major's footman with him, he called out to the latter, “ Who is that, Philip ?” which were the last words he was heard to speak. The gentleman approaching the bed-side, found he had cut a deep wound in his wrist with a pen-knife, and was drenched in blood. A surgeon was instantly sent for, but he was dead before his arrival.

The Onebys of Barwell continued to reside on that manor till the death of Major Oneby's cousin, Anthony Oneby, Esq., who died there, leaving two daughters, Jane, who died unmarried, and Susanna, who was married first to William Frith, Esq., of Watford, and secondly to Mr. Ailway, of the same place.

They stopped the chairmen, and brutally attempted to force the lady out. The chairmen opposed them; when they drew their swords, and demolished the vehicle. The watchmen interfered, and one of them was run through the body, and immediately expired.

“ Clubs were formed of those desperadoes, who assumed the name of the ‘ *Bold Bucks*,’ and the ‘ *Hell-fires*.’

“ Their excesses became so notorious, and proved such a public grievance, that in 1721, a Royal proclamation was issued to suppress those clubs, and about the same time a check was put to duelling by the sentence of death passed on a Major Oneby, who thought it advisable to baulk the executioner and the public curiosity by committing suicide.”



## THE TRIAL OF JAMES STEWART, OF THE CLAN STEWART OF APPIN.

THIS trial, which took place before the Circuit Court of Justiciary, at Inverary, on the 21st, 22nd, 23rd, and 25th of September, 1752, created a great sensation throughout Scotland. It arose out of an ancient and deadly feud, which had existed for ages, between the Stewart and the Campbell clans, and which the forfeitures and confiscations consequent on the rising of 1745 tended not a little to aggravate; the Stewarts, on such occasions, being generally losers in favour of the Campbells.

In the present instance Charles Stewart of Ardshiel, in Argyllshire, had been attainted as a traitor, and was confined in Fort William. His estate in Ardshiel was forfeited to the crown, and a factor was placed upon it. The gentleman chosen for this office was Colin Campbell, Esq., of Glenure, a scion of the family now represented by Sir Alexander Campbell, Bart. of Barcaldine and Glenure. Mr. Colin Campbell, while in the execution of the dangerous duty he had undertaken, was shot dead by some unseen hand. James Stewart the natural brother of the attainted Charles Stewart of Ardshiel, was arrested for this murder and tried accordingly; though to this day there is much doubt upon the fairness of the proceedings against him. From the fact of the great head of the house of Campbell sitting in the judgment seat, and the jurors being mostly Campbells, and from the very violence exhibited in the conduct of the prosecution, Stewart was held by his relations and friends, with certainly some grounds for their belief, to have been sacrificed to party spirit and revenge. In the following account care has been taken to avoid as much as possible, the overcharged statements of either side, and to obtain from the evidence an accurate narrative of the transaction. The affair is curious in itself as giving insight into the manners of the highlands of Scotland at a time when the agitation and animosity of a fierce and warlike



population had scarcely subsided from the effects of the two defeated insurrections which decided the fate of the empire,

Mr. Stewart's trial commenced on the 21st Sept. 1752.

Archibald third Duke of Argyle, Lord Justice General, with the Lords Elchies and Kilkerran, sat as Judges : and in this case alone did a Lord Justice General, and a Lord Advocate, ever make their appearance at a circuit. The Right Hon. William Grant of Preston Grange, was then Lord Advocate.

The indictment, a very long one, was raised at the instance of his Majesty's Advocate, and of the widow and children of the deceased. Both the prisoner and one Allan Breck Stewart were charged in it as guilty of the murder ; Allan Breck, otherwise Vic Ean Vic Allister, as the actual murderer, and the prisoner as being *art* and *part*, or an accomplice. The former not appearing, sentence of outlawry was pronounced against him ; the trial went on against the latter.—The indictment endeavoured by a very long chain of circumstances, to fix the guilt upon the prisoner. It first set forth his having conceived a resentment against the deceased on account of his having, in quality of factor upon the forfeited estate of Ardshiel, turned the prisoner and other tenants out of their possessions ; then it stated that the prisoner, in repeated expressions, threatened vengeance against the deceased : that he conspired to murder him ; and instigated Allan Breck Stewart, a man of desperate fortune, to this enterprise ; that Allan Breck did accordingly waylay the deceased, and murder him in the wood of Lettermore, in the afternoon of Thursday the 14th of May, 1752, by shooting him through the body, so that he died upon the spot ; that Allan Breck immediately absconded ; and that the prisoner applied to his friends, and procured a little money, which he sent to Allan Breck at a place appointed, to enable him to make his escape.

The trial began by long speeches upon the *relevancy of the indictment*, i. e. whether upon such indictment, the prisoner could be brought to trial for his life. This on the part of the prisoner was extremely ill-judged ; for the only objection urged to the procedure of the trial, which in the least consisted with law or common sense, was, that Allan Breck Stewart, the alleged actual murderer, ought to be tried and convicted ere the prisoner could be tried as his accomplice. And the argument was attended with this bad consequence, that it afforded an opportunity to the counsel for the prosecutor to prejudge the jury, by dressing up a

tale of guilt; by making an artificial arrangement of circumstances tending to criminate the prisoner; so that in a country where the minds of men were exasperated against each other by political resentments, family feuds, and a long train of mutual injuries, the jury might naturally confound the declamations of a lawyer with the testimonies of a witness.

The harangues of the prosecuting counsel were remarkably violent and inflammatory.

From the speech of Mr. Walter Stewart, one of the advocates for the prisoner, or pannel, as he is called in Scotch law, the following passage is here extracted as one of striking eloquence:—

“ In the entry of this trial, my lord, I cannot help complaining of most intolerable hardships, which this pannel has undergone since May last, when he was first incarcerated. My lord advocate’s humanity, his tenderness to pannels, I can, from my own little experience in trials, subscribe to. The unjustifiable steps I am now to complain of, I must therefore lay to the charge of the private prosecutors. I dare say my lord advocate as little knew of them, as he will now when he hears, approve of them. The pannel since the month of May last has been kept in the closest confinement. For the first six weeks, no mortal was allowed access to him: after that, indeed, for some short time, admittance was given to his wife, and one or two more; but any who could be thought proper persons to prepare defences for his trial, were carefully denied access to him. And again, for a considerable time before his trial, he was close confined, and all admittance refused. When his counsel came to this place, and wanted to see him, we were told that none were to be admitted without a warrant from the Duke of Argyle; and a petition was actually drawn, to be presented to your grace, when a message came allowing us access. His sons and his servants too have suffered the same close imprisonment. And all this not only contrary to humanity, but directly in the face of the act of parliament 1701, which discharges close imprisonment after eight days, under the severest penalties. By the precaution of this private prosecutor too, the bar has been in a manner shut up against this pannel; all the old experienced counsel, though not brought to maintain the charge against him, have been retained from giving him their assistance; otherways, in all probability, I had not now been employed to open his defence. The pannel’s house and his repositories have been three several times searched, and papers carried off by near relations of the prosecutors, attended by a military force, and without

any warrant. His wife and his sons, who by the laws of God and man cannot be called as witnesses against him, have been examined upon oath ; some of them five different times, to catch at any discordance, had there been any, in their declarations ; and these very declarations are now proposed to be brought in proof against the pannel, while the declarants themselves are alive, and ought by the fundamental laws of this kingdom, to be examined in presence of the pannel and jury. These are hardships, my lord, which, thanks be to God ! meet with no encouragement in this now a free country. The time was, indeed when the feeble law was unable to protect the innocent, when the rules of justice were broke to pieces by the ruffian hands of power ; then our unhappy country groaned under the intolerable yoke of arbitrary power ; then was scarce the form of a trial ; the best, the greatest of our country, even an Argyle, fell a sacrifice to the will of tyranny. But now, my lords, the days which our fathers wished to see, and did not see, we have the happiness to enjoy. A fair trial, which the noblest could not obtain, the meanest are now entitled to, under the protection of laws guarded by a government ever watchful for the good of its subjects, under which the keenness of private prosecutors will meet with no countenance or encouragement. The pannel, enjoying the privileges of every free-born Briton is now to stand trial before the judges and jury of his country ; and as his judges will shew the greatest impartiality, he expects the same from the gentlemen of the jury. They will judge of the proof brought before them, having in their eye the example of Almighty God by whose holy name they have sworn to do justly, before whose awful tribunal there is no judgment formed from names or personal prejudices, but every man is judged according to his works. They will consider, that as they are to answer to God, so they have to answer to the world, who will make a narrow and impartial scrutiny into their verdict. At the same time I cannot help saying, that amid all the hardships this pannel has suffered, I hope it is one piece of good fortune that he is to be tried by gentlemen of the same county with himself, who from their more particular knowledge of the pannel, and his character in the world, should be best judges what proof is necessary to fix upon him so black a crime."

The argument on the relevancy being finished, the court pronounced their interlocution to effect that they " Repel the objections to the libel, and find the libel relevant to infer the pains of law ; that, time and place libelled, the deceased, Colin Campbell, of Glenure, was murdered, and that the pannel, James Stewart, was guilty actor, or art and part thereof ; but

allow the pannel to prove all facts and circumstances that may tend to exculpate him ; and remit the pannel, with the libel, as found relevant, to the knowledge of an assize."

At the assize or investigation of the facts, a vast number of witnesses were produced. The main evidence, however, which bore against the prisoner was as follows :—

Mungo Campbell, writer in Edinburgh, deposed that he set out from Edinburgh on the 7th of May last, in company with the deceased, Mr. Campbell, of Glenure, to assist him in ejecting some of the tenants upon the forfeited estates of Ardshiel and Lochiel, over which the deceased was factor ; which tenants, it was apprehended, would not remove till legally ejected ; that they went to Fort William ; and, in their return, they arrived on Thursday the 14th of May, at the ferry of Ballachelish, proposing next day to eject some of the tenants of Ardshiel. The deceased, after waiting about an hour, and communing with some of the tenants, crossed the ferry between four and five in the afternoon. Glenure and the deponent entered the wood of Lettermore, and coming to a part where the wood was pretty thick upon both sides, so that the murderer could have easily concealed himself in the bushes, and where the road was so rough and narrow that they could not ride conveniently two horses abreast, the deponent went foremost, and might have been about twice the length of the court room before the deceased, when he heard a shot behind him, and heard Glenure repeatedly cry out, ' Oh ! I am dead.' The deponent immediately returned to Glenure, alighted from his horse, and also took the deceased off his horse ; then run up the hill from the road to see who had shot him. He saw, at some distance, a man with a short dark-coloured coat, and a gun in his hand, going away from him ; and there was so great a distance between them that the deponent thinks he could not have known him although he had seen his face. As the deponent came nearer he mended his pace, and disappeared by high grounds being interjected between them. After Glenure was taken from his horse, he leaned a while upon the deponent's shoulder, endeavoured to open his breast to see where the bullets with which he was shot came out of his body, and was not able ; but there were two holes in his waistcoat, over the stomach, where the bullets had come out. After continuing upwards of half an hour in agonies, Glenure expired. Deposed, that there are places in the wood so situated that a person standing there might see most part of the road from the ferry to the wood,

and even part of the road from the ferry to Fort William, some of which places are not a musket-shot from the place where Glenure was murdered.

John Mackenzie, servant to Glenure, deposed that on the 14th of May last, when he was riding about a gun-shot behind his master in the wood of Lettermore, he heard a shot, which he took to be the report of a musket. It neither alarmed him nor did he know whence it came ; but, when he came up he saw the preceding witness wringing his hands, and his master lying on the ground with a great deal of blood about him, just breathing, and not able to speak. The deponent was desired by the preceding witness to go in quest of Mr. Campbell, of Ballieveolan, and his sons, to inform them of what had happened, and entreat them to come immediately to the spot where the deceased lay. He was directed by a neighbouring tenant to go to the house of James Stewart, the prisoner, in expectation that he would learn from him where Ballieveolan was. The prisoner seeing the deponent weeping inquired what the matter was? the deponent told him his master was killed ; upon which the prisoner asked him by whom, and how it was done? to which he answered, he did not know by whom, and believed it to be by a shot from a gun or pistol. The prisoner wrung his hands, and expressed great concern at what had happened, as it might bring innocent people to trouble, which he prayed might not be the case. Deposed, that when his master and he were about three miles on their way, coming from Fort William, the day of the murder, they met John Beg Maccoll, a servant of the prisoner's, going there, and Maccoll had performed his journey and returned to the ferry of Ballachelish about the same time with the deponent, his master and he having stopped about an hour and a half, or two hours on the road ; that Maccoll was impatient to be ferried over, and did cross the ferry about half an hour before Glenure (*i. e.* Mr. Campbell, of Glenure).

Donald Kennedy, sheriff's-officer, deposed, that when Glenure and his company were at the ferry of Ballachelish, the deponent saw John Maccoll, the prisoner's servant, who seemed to be in a hurry to cross the ferry. Glenure said to him, "Sir, you travel better than I do." To which he answered, "I am in haste;" and so went over the ferry about an hour before Glenure crossed it. The deponent, who was in company with Glenure, for the purpose of executing the warrant of ejectment crossed the ferry along with him, and went on before. When he had gone

about half a mile into the wood of Lettermore, he heard a shot, which he did not regard, till hearing Mungo Campbell make a great noise like one weeping, he returned, and Mungo said to him, the villain has killed my dear uncle ; adding, that he had only seen one man ; and that he, the deponent, asked no questions, being in confusion and dreading the same fate himself. Deposed that, some time after, when the people were gathered about the corpse, John Maccoll was among them.

John Roy Livingstone deposed, that on Thursday the 14th of May last, he saw Allan Breck Stewart, in Ballachelish, in the forenoon, dressed in a dun coloured great coat. In the evening he saw John Maccoll, the prisoner's servant, travelling at a good rate from the ferry of Ballachelish to his master's house. The deponent joined him, asked him where he had been ? and got for answer, at Maryburgh (the village of Fort William) for Charles Stuart, notary public. Maccoll further told him that Glenure was to be that night at Kintalline. About two hours after, the deponent, who was then in the wood of Lettermore, heard a shot, and on going up found that Glenure was murdered.

Duncan Campbell, change-keeper, at Annat, deposed that one day in April last, when Allan Breck Stewart was in his house, Allan said, that he hated all of the name of Campbell ; and bid the deponent, if he had any respect for his friends, tell them, that if they offered to turn out the possessors of Ardshiel's estate, he would make black cocks of them ; which the deponent understood to mean he would shoot them. Allan Breck said, that he had another quarrel with Glenure, besides his turning the people of Ardshiel out of their possessions, viz. his writing to Colonel Crawford, informing him that Allan Breck was come from France, but that he was too cunning for Glenure ; for that when at Edinburgh, he had made up his peace with General Churchill, and got a pass. Deposed that Allan Breck said twenty times he would be upsides with Glenure, and wanted nothing more than to meet him in a convenient place : that Allan Breck was not drunk, for he could walk and talk as well as any man ; but it could be observed he had been drinking.

Robert Stewart deposed, that some time in April last, he was in company with Allan Breck and the preceding witness. Allan complained much of Glenure's and Mr. Campbell, of Ballieveolan's conduct towards him, and particularly of Glenure's sending notice to Fort William of his being in the country, so that he might be apprehended ; but he would be upsides with him ; and take an opportunity to dispatch

either him or Ballieveolan before leaving the country. Allan Breck was much in drink when he uttered these expressions.

Malcolm Bane Maccoll, change-keeper at Portnacrosch, deposed, that in April last, Allan Breck Stewart and John Stewart, in Auchnacoean, sat up all night in his house drinking. Next morning John Maccoll, servant to the deponent, came into the room in a shabby condition. Allan Breck asked him who he was? John Stewart answered, an honest poor man with a numerous family of children, and it would be great charity in any body to assist him : upon this Allan Breck desired John Stewart to give him a stone of meal and he would pay for it. He then gave Maccoll a dram, and said, "If he would fetch him the red fox's skin, he would give him what was much better ;" to which the said John Maccoll answered, "that he was no sportsman, and that he was much better skilled in ploughing or delving." The deponent took little notice of these expressions at the time ; but after hearing of Glenure's murder, he believed that Allan Breck meant Glenure, as he was commonly called Colin Roy, i. e. Red Colin.

John Stewart, of Fasnacloich, deposed that he told Allan Breck that Glenure was come from Edinburgh to remove the tenants ; to which Allan Breck answered, if he had a warrant there was no more to be said ; but if he had not a warrant, he would not be allowed to remove them.

John Stewart, son to the preceding witness, deposed that Allan Breck, after a visit of three days at his father's house, left it on the morning of Monday the 11th of May. He was then dressed in a long blue coat, red waistcoat, and black breeches, and had a feather in his hat ; but when the deponent met him next day at Ballachelish, he was dressed in a short black coat, with round white buttons, with a dark green coat over it ; and he had on trowsers and a blue bonnet. The deponent observed to Allan, that he had changed his dress, who answered, he did it because the day was warm. John Stewart, younger of Ballachelish, swore that he saw Allan Breck at the deponent's father's house on Tuesday, the 12th of May last, and heard him ask questions about Glenure's travelling to Lochaber.

Catherine Maccoll, servant to the prisoner, deposed, that on the afternoon of Monday, the 11th of May, Allan Breck Stewart came to the prisoner's house dressed in a long blue coat, red waistcoat, and black breeches ; but the prisoner was from home, having gone to Keels, to meet Mr. Campbell of Airds, and it was late at night before he returned :



the family waited supper for him ; and he supped in company with the said Allan Breck, a daughter and a nephew of the laird of Fasna-cloich, and the prisoner's own family. Allan Breck did not lie all night in the house, but in a barn ; and next morning left her master's house. Allan Breck, when he left the house, had on a dun-coloured great coat. On the evening of Friday, the 15th of May, she saw Mrs. Stewart, the prisoner's wife, put into a sack a long blue coat and a red waistcoat, which she took to be Allan Breck's clothes, and was desired by her to hide them without the house, which was done accordingly. On Saturday evening, her mistress desired her to go for what she had hid, and leave it at the back of the brewhouse ; she did this also, and had not seen the clothes since.

Archibald Cameron, deposed that on Monday, the 11th of May, he came to the house of the prisoner, who was not then at home, but arrived before night-fall. Allan Breck came there a little after the deponent. The prisoner and his family, Allan Breck, and the deponent, sat in one room and supped together : and he did not observe Allan Breck and the prisoner speak in private that night. The deponent and Allan Stewart, a son of the prisoner's, lay in one bed, and Allan Breck and Charles Stewart, also a son of the prisoner's, lay in another bed in the same barn. They all went to bed much about one time, and rose together next morning ; and the deponent did not see the prisoner about the house.

Alexander Stewart, of Ballachelish, deposed that Allan Breck came to his house in the afternoon of Wednesday, the 13th of May, and staid with him till next day between eleven and twelve o'clock, when he went a fishing in a neighbouring rivulet, and did not take leave of the deponent, since which time he has not seen him. As the murder happened that night, and as Allan Breck did not return to the deponent's house, he next morning really thought that Allan Breck Stewart might be the actor in this murder. Allan Breck was dressed in a great coat, and under it a short black coat with white buttons.

Donald Stewart, in Ballachelish, deposed, that on Friday, the 15th of May, he met the prisoner, and, upon expressing his regret at Glenure's murder, the prisoner joined with him ; and added, that one Serjeant More, who, to the deponent's knowledge, had not been in the country these ten years, had threatened harm to Glenure in France. On the preceding evening the deponent received a message, that a person at a



little distance from the house wished to see him. He went, and found it to be Allan Breck Stewart, dressed in a great coat, and a short dark coat under it, with white metal buttons. The deponent challenged him with being guilty of the murder; he said he had no concern in it, but believed he should be suspected: and on this account, and being a deserter, it was necessary for him to leave the kingdom: and therefore, as he was very scarce of money, he requested the deponent to go to the prisoner, and acquaint him, that he, Allan Breck, was gone to Coalisnacoan, and desire him, if possible, to send him money there. The deponent promised to deliver the message, and did deliver it to the prisoner, who, without saying whether he was to send the money or not, asked why Allan Breck himself did not come for money if he wanted it? to which the deponent answered, that Allan told him he would be suspected of the murder, and was a deserter. The prisoner replied he hoped in God Allan Breck was not guilty of the murder. On the Sunday after, the deponent met Alexander Bane Stewart, packman, who told him he had been at the prisoner's house of Aucharn, and had got either three or five guineas, to be left with John Breck Maccoll, in Coalisnacoan, for Allan Breck's use if he called there.

John Macdonald, of Glenco, deposed, that on Friday, the 15th of May, Allan Breck came to the deponent's house between three and four in the morning, when the family were all in bed, knocked at the window, and did not stay above a quarter of an hour, and gave him the first notice of Glenure's being murdered, the evening before, in the wood of Lattermore. Allan Breck said he was going to leave the country, and had come to bid him farewell.

Mary Macdonald deposed that on Sunday, the 17th of May, a little before sun-set, she saw Allan Breck sitting in the wood of Coalisnacoan. On her approach he started to his feet; the common salutation passed between them, but she was alarmed at meeting a man in a place so remote.

Alexander Campbell, in Teynaluib, deposed that in the end of April, the prisoner stopped at his house to get his horse fed. He called for a dram; and one Maclaren, a merchant in Stirling, asked the prisoner to a dram; to which the prisoner answered, 'he did not know any thing he would help the deponent, or any of his name to, if it was not to the gibbet.' The deponent replied, saying, it seems if any of the Campbells were at the gallows, the prisoner would draw down their feet; to which

the latter rejoined, ‘ those of some of them he would, and of some of them he would not.’ The deponent then said, he supposed Glenure was the man of the name with whom the prisoner had the greatest quarrel, but he had no good cause for it ; to which the prisoner answered, if Glenure had used the deponent as ill as him, by turning the deponent out of his possession, he would have had no less quarrel with Glenure than the prisoner had. Being interrogated for the prisoner, deposed that the prisoner was perfectly sober, and the deponent thought these expressions proceeded from malice ; and this witness was confirmed by two others, except in the assertion of the prisoner being sober.

Dugald Maccoll, servant to the prisoner, deposed that on Thursday evening, the 14th of May, after notice of Glenure’s murder came to Aucharn, Allan Stewart, son to the pannel, desired the deponent and John Beg Maccoll, to hide a large Spanish gun that used to stand in the brewhouse ; and told them that he himself had concealed a lesser gun that used to stand at the end of the girnel, in the barn, under the said girnel, where he thought it would be safe. They did so accordingly, but next day the prisoner, not thinking the place where the arms were concealed as sufficiently secret, ordered the deponent and John Beg Maccoll to carry them from the place where they were hid, and hide them in the moor ; and they accordingly lodged them in the cleft of a rock. Deposed, that the arms so hid, were a large Spanish gun, loaded with powder and small shot, which Allan Breck was in use to carry, in order to shoot black cocks ; a small gun not loaded, which Allan Stewart, the prisoner’s son, was in use to carry in the morning for the same purpose, and four swords. Deposed, that before the arms were thus hid, it was reported at Aucharn that soldiers were coming into the country.

“ John Beg Maccoll, servant to the prisoner, deposed, that late on Thursday evening, after the news of Glenure’s murder had arrived at Aucharn, the prisoner’s wife ordered Dugald Maccoll and the deponent to hide all the arms that were about the house, as it was probable a party of soldiers would be ordered into the country. They accordingly took a large loaded gun out of the brewhouse, and hid it under the thatch of the sheep-house. They enquired at the same time for the little gun that used to lie in the barn, and were told by Allan Stewart, the prisoner’s son, that he had hid it under the large girnel ; and they concealed four swords under a parcel of thatch. Next day they were desired by their mistress to hide the arms better : and they took the large loaded gun and

the swords from the places where they had concealed them, and the little gun which was not loaded, from under the girnel, where Allan Stewart said the night before he had laid it, and hid all of them at some distance from the house. Deposed, that he saw the little gun either on the Tuesday or Wednesday preceding the murder, and gave as the cause of his not seeing it on Thursday, that he was from home almost all that day. He did not see the little gun loaded since the month of March, when the black cocks were crowding. At that time he saw Allan Breck carry it one morning loaded with small shot, who told the deponent that it missed fire thrice when he presented it to a black cock, and went off the fourth time without killing the bird. Deposed, that neither of the guns were in good order; for the large one, when the trigger was drawn, used to stand at half cock, and the little one had an old worn flint, and often missed fire.

Captain David Chapeau, of General Pulteney's regiment, deposed that upon information given by Mr. Campbell of Barcaldine, that there were some arms hid among the rocks, near the prisoner's house, he went thither with a party of his men, and found the arms above described. The large gun was loaded with small shot; the little gun was not loaded, and appeared to have been lately fired; for he put his finger into the muzzle, and it came out black. Being interrogated by the prisoner, whether a musket being put by foul will not give that appearance to the finger, a month after it had been discharged? deposed, he cannot tell, not being accustomed to see arms used so. Deposed, that the lock of the unloaded piece had but one screw nail, and the other end of the lock was tied to the stock with a string. That a gun in such a situation may be fit enough to be fired with. That he took the fuzees along with him to Fort William, and delivered them to the adjutant; and the deponent does not know by what means the lock now missing, which belonged to the little gun, was lost, but believes it to have been by accident.

Further evidence proved that after his apprehension, the prisoner sent five guineas to Allan Breck, who received them from a pedlar while concealed in a wood. Several witnesses also deposed to their having seen Allan Breck dressed occasionally in a black short coat, and white buttons; and John Cameron, of Strone, and Ewan Cameron, his servant, deposed, that they heard one Serjeant More threaten to shoot Glenure on account of his hard usage of the tenants of Ardshiel.

The jury unanimously found the pannel, James Stewart, guilty, art and part, of the murder of Colin Campbell, of Glenure.

The court adjudged the prisoner to be taken, on Wednesday, the 8th of November, to the south side of the ferry of Ballachelish, to be hanged on a gibbet till he be dead, his body to be hung in chains, and his personal estate to be forfeited.

The Duke of Argyle, Lord Justice General, then addressed the prisoner in a speech of considerable length, which, from the party feeling that ran through it, did his grace but little credit. The duke began by telling the prisoner that he had had a most impartial trial, and that he had been prosecuted with all the moderation consistent with the crime of which he stood accused

After descanting upon the different rebellions raised by the partizans of the house of Stewart, and particularly that of 1745, the duke proceeded :—" If you had been successful in that rebellion, you had been now triumphant, with your confederates, trampling upon the laws of your country, the liberties of your fellow subjects, and on the Protestant religion : you might have been now giving the law, where you have now received the judgment of it ; and we, who are this day your judges, might have been tried before one of your mock courts of judicature, and then you might have been' satiated with the blood of any name or clan to which you had an aversion.

" Though you don't now stand accused as a rebel, nor am I permitted to call you a traitor, because his Majesty's undeserved mercy to you, did several years ago restore you to the state of an innocent man ; yet I may say, with great force of truth, that this murder has been visibly the effect and consequence of the late rebellion."

The prisoner then addressed the court in these words :—" My Lords, I tamely submit to my hard sentence. I forgive the jury, and the witnesses, who have sworn several things falsely against me ; and I declare before the great God, and this auditory, that I had no previous knowledge of the murder of Colin Campbell, of Glenure, and am as innocent of it as a child unborn. I am not afraid to die ; but what grieves me, is my character, that after ages should think me capable of such a horrid and barbarous murder."

On the fatal day the prisoner was escorted by a strong military guard to the place of execution. He produced three copies of a paper, containing his dying speech ; one of these he delivered to the civil magis-

trate, another to the commander of the troops which guarded him, and the third he read with a distinct voice to a great multitude of spectators, which had come to witness his execution. And in his speech, which was very minute, he denied all accession to, or previous knowledge of Glenure's murder. The minds of the spectators, already engaged with the circumstances of this extraordinary trial, and the awful scene which was before them, were struck with superstitious terror, at the tempest which raged during the time of the execution.

## THE ASSASSINATION OF MISS KNOX, OF PREHEN.

THIS dreadful affair, which occurred in Ireland, is in all its details a painful and melancholy story. The perpetrator of the crime, John Macnaghton was descended from an ancient Scottish family of that name, which settled several centuries ago at Benvariden in the county of Antrim, the north-east extremity of Ireland, about six miles from Coleraine, and two from Ballymony. The family enjoyed a considerable hereditary estate, and lived in the highest reputation. Macnaghton's father was a magistrate of the county of Antrim, where he was much honoured and beloved; his uncle, of the same name, who was also a magistrate, and a cornet on half pay at the time of Thurot's landing, was the first gentleman who distinguished himself upon that occasion, and appeared in arms at the head of two hundred militia, all stout men and well appointed; Macnaghton's mother was the daughter of Henry Mac Manus, Esq; alderman of the city of Londonderry.

John Macnaghton was born in the year 1722; his father died when he was about six years old, leaving one other son and three daughters. At a proper age, he was sent to the public school of Raphoe. From the school of Raphoe he went to Trinity College, Dublin, where he continued till he came of age, and was put in possession of his estate: from this time he began to evince a taste for gambling. He had a good person, a polite address, and by no means a contemptible understanding; these qualifications recommended him to the notice of Clotworthy, first Earl of Massareene, who introduced him to some of the leading people in the kingdom: by favour of this introduction, he became acquainted with several persons who were remarkable for their love of play, and was generally one in parties of the best company. In this school he is said to have made rapid progress, and to have pursued his favourite study with great success for about two years; when

being still at college, and of sufficient standing, he took his bachelor's degree. He was not, however, long contented to move in so narrow a sphere ; he visited all the public places, both in England and Ireland : he played with less reputable company, and for still larger sums ; so that in a few years his debts were more than his whole estate would pay : some of it, therefore, he was obliged to sell, and to mortgage the rest ; yet his friendship and connection with Lord Massareene enabled him to retrieve his affairs, by marrying a daughter of the Very Rev. Richard Daniel, Dean of Down, to whose only other daughter his Lordship was himself married. The lady's fortune, however, which was £5,000, was settled to portion their younger children ; what remained of Macnaghton's own estate was left to descend to his heir ; and he bound himself by a solemn oath, never to play again at any game either of chance or skill, except for a trifling sum at a sitting ; which oath was, by the lady's friends, made the condition of his marriage.

To his wife Macnaghton made an affectionate husband, and kept his promise to abstain from gaming about two years ; but being uneasy under the restraint, he pretended to his wife, that on a certain night he might have won a thousand pounds, if he had not been tied up from play ; and alleging that opportunities of equal advantage might again offer, he prevailed upon her, and Mrs. Daniel, her mother, then a widow, to absolve him from his oath, which he supposed to be no longer binding than whilst those who exacted it desired it should. In consequence of this fatal liberty, thus artfully procured, he returned to the gaming table, with yet greater eagerness than before. In a short time he was involved in new distresses, more hopeless than the first, as his credit was less, and many of his resources were cut off. Several suits were now commenced against him for large sums of money : and some sheriff's officers, having a writ to execute against him, got intelligence where he was spending the evening, and beset the house : he staid till it was very late, and then went into a sedan chair, in order to go home ; the officers did not think proper to stop the chair, but followed it till it came to his house ; but as it was necessary they should execute their writ before he went in, as it would be difficult afterwards to get admittance, they came up to him when the chair stopped, and told him their business : Macnaghton declared he would not be arrested, and the officers proceeding to use force, he resisted : the scuffle that ensued made a great noise, and happened unfortunately to be just under the window of Mrs. Macnaghton's chamber, who had then lain-in about a

fortnight, and was impatiently expecting him home: the noise first alarmed her, and upon hearing the occasion of it, she was so terrified at the apprehensions of his danger, and so shocked at the desperate situation of his affairs, that she fell into a nervous disorder, which, in a very short time, put an end to her life.

Some years after the death of his wife, Macnaghton having partially improved in circumstances, paid his addresses secretly to Mary Ann Knox, daughter of Andrew Knox, Esq., of Prehen, in the county of Derry, a gentleman possessed of an estate of about fifteen hundred pounds per annum; and as by the marriage-settlement five thousand pounds had been settled on the younger children, Miss Knox, having only one brother and no sister, was entitled to the whole of five thousand pounds even though she disobliged her parents by marriage. The beauty, sweetness of temper, and other accomplishments of the young lady were remarkable. She was then about fifteen.

Mr. Macnaghton, who became an intimate friend of the Knoxes, and a constant visitor among them, obtained a promise from the young lady to marry him, if he could get her father's acquiescence. He soon after spoke to Mr. Knox on the subject, who not only absolutely refused his consent, and gave his reasons for it, but showed his resentment, by forbidding him his house.

Mr. Macnaghton then begged Mr. Knox would permit him to visit as formerly (as he said it would look strange to the world to be prevented visiting a family all the neighbours knew he had been so intimate with,) and solemnly promised upon his honour, never more to think of, or mention this affair; and added, that as he had not spoken of it to the young lady, Mr. Knox need never do so, and thus the affair would drop of itself. Macnaghton obtained the leave he sought, and made use of the favour to continue his addresses to the daughter, and told her Mr. Knox had promised him his consent; but, desiring, however, that no further mention might be made of the affair, for a year or two, till some material business was decided, which he would acquaint him with. The young lady again promised she would marry him as soon as that consent was obtained. He remained some time, constantly watching his opportunity to complete his design. One day, being in company with Miss Knox and a young gentleman (a mere boy) in a retired room in the house, he pressed her to marry him, protesting he never could be happy till he was sure of her; and with an air of sprightly raillery, pulling out a prayer



book, he began to read the marriage service, and insisted on the young lady's making the responses, which she did, but to every one she added, "provided her father consented."

Some short time after this, Miss Knox going to a friend's house on a week's visit, Mr. Macnaghton who was also an intimate there, soon followed her. Here he fixed his scene for action; here he claimed her, and calling her his wife, insisted on her living with him, which the young lady absolutely refused, and leaving the house, went directly and informed her uncle of the whole affair. On this Mr. Knox wrote a letter to Macnaghton, telling him what a base dishonourable villain he was, and bade him avoid his sight for ever. Upon the receipt of the letter, Macnaghton advertised his marriage in the public newspapers, cautioning every other man not to marry his lawful wife. This was answered by a very spirited advertisement from the father, with an affidavit of the whole affair from the daughter annexed.

Mr. Knox then, by the advice, and under the direction of Doctor Ratcliffe, a very celebrated civilian, commenced a suit in the ecclesiastical court of the diocese of Londonderry, with a view, first to get the contract proved, and then to set it aside by virtue of an Act of Parliament, which made all such contracts, with respect to persons under age, *ipso facto*, void: but Macnaghton defeated his first intention of proving the contract, by keeping Mr. Hamilton (the young gentleman present at the sham marriage) the only witness, out of the way, and therefore no pleadings were had in that court on either side. While this suit was depending in the ecclesiastical court of Londonderry, Mr. James Knox heard that Macnaghton was at Ballybofey, a village in Donegal, not far from Strabane, and had threatened to waylay him there; upon which he obtained a warrant from Alderman Hog to take him into custody. This Macnaghton treated in a ludicrous manner, and printed and dispersed a great number of hand-bills, in which he represented the warrant as obtained not against him but his shadow, as he himself neither was nor could have been at Ballybofey at the time pretended; this warrant, however, was executed upon him, but it was immediately superseded and had no consequences. Soon after Macnaghton thought fit to remove the cause that was depending in Londonderry court, to the metropolitan court of Armagh; but with what particular view does not appear, as he still continued to keep Mr. Hamilton from being examined. Mr. Knox, who was in earnest in the cause, and impatient to bring it to an issue, re-

moved it from the court of Armagh to a court of Delegates in Ireland, where Mr. Hamilton was obliged to appear and give his testimony ; and after several hearings, the contract being proved, was afterwards declared to be void, and Mr. Knox obtained five hundred pounds damages.

After the determination of this suit, Macnaghton's affairs became every day more desperate : he had often been heard to vow vengeance against Mr. Andrew Knox, Mr. James Knox, and others of the family ; upon which they obtained Bench warrants against him of Mr. Justice Scott ; and they had also sued out a writ against him, as the foundation of a suit to recover the damages which had been awarded in the court of Delegates. From this time, therefore, he appeared no more in public, but skulked about the country by stealth, and in disguise, so that Mr. Knox could never get either the warrants or the writ executed.

In this situation was Macnaghton in the month of November, 1760, at which time he came over into England, as he pretended, to lodge an appeal in the court of Delegates there, against the sentence which had been pronounced against him in the court of Delegates in Ireland : he, however, did not take any steps relating to the appeal.

After returning to Ireland, recrossing to England, and again going back to Ireland, during the whole of which time he persevered in his foul persecution of Miss Knox and her family, Macnaghton attained the acme of his criminal conduct by perpetrating the murder of the young lady in the following manner.

About the latter end of October 1761, knowing that Mr. Knox, of Prehen, would be obliged shortly to set off from thence for Dublin, to attend the business of parliament, Macnaghton caused it to be given out, that he was at Benvarden ; but on the first of November he repaired to the country in the neighbourhood of Prehen, near Londonderry, in the character of a sportsman, as if to shoot game, and assumed the name of Smith. He set out with no less than twelve associates, all of whom deserted him one by one, except his own groom, one George Mac Dougal, his plough-driver James Mac Carrel, and one Thomas Dunlap, his tenant.

In this character, with these attendants, and under this name, he went to the house of Mr. Irwin, which was situated on the banks of a considerable river, called the Burndermit, and is distant from Prehen about eight miles, being near the road from thence to Dublin. Mr. Irwin was a gentleman of family, employed in the hearth-money collection, whose

known hospitality rendered his house the common resort of gentlemen, who came as sportsmen into that part of the country, who were all welcome, whether he had a personal knowledge of them or not.

While he was at Mr. Irwin's he received intelligence from one of his scouts, that Mr. Knox was to set out from Prehen on the tenth of November in the morning, and that he would take his daughter and the rest of his family with him.

As soon as he had received this notice, he reconnoitered the country adjacent to the road through which Mr. Knox and his family must pass, on his way to Dublin, to a considerable distance ; and he pitched upon a spot on the lands of Cloughean, about a mile from Mr. Irwin's, about a quarter of a mile from the banks of Burndermit, and about three miles from Strabane. This spot was thought most convenient for his purpose, because there were at least ten different avenues to it, by any of which he might escape, and because there was a very narrow pass, through which Mr. Knox's carriage must come, between a large dunghill and a cabin belonging to one Keys, that was also under a bank of oak, behind which, as well as behind the dunghill, he or his accomplices might lie concealed till the very moment when the carriage should come up.

Before day-break on the morning of the 10th of November he repaired to Keys' cabin with his accomplices on horseback, bringing with him in a sack six fire-locks, nine pistols, with several ropes, and a long leathern strap, which he declared was to tie Miss Knox on horseback behind himself or one of his people.

When this apparatus was safely lodged in the cabin, Macnaghton and those who were with him took their stations, and waited for the appearance of their prey.

Mr. Knox had been told that Macnaghton was lurking about, and that he had declared he would leave nothing unattempted to get Miss Knox into his hands, throwing out at the same time the most terrible menaces against any that should oppose him : he said he would cause a scene of blood in Mr. Knox's family which should make the ears of the child that was yet unborn to tingle ; and that, though he had begun with a comedy, yet he would end with a tragedy, confirming his menace with an oath. This had determined Mr. Knox to take the young lady with him to Dublin, and to arm himself and the servants that attended him. His brother, Mr. James Knox, who was also at this time with him at Prehen, was to be of the party.

Accordingly Mr. James Knox set out in a single horse-chaise, with a servant behind him on horseback ; young Mr. Knox, the brother of the young lady, on horseback, with his servant also on horseback ; Mr. Knox, Mrs. Knox, Miss Knox, and Mrs. Knox's woman, in a coach attended by one MacCullough, Mr. Knox's blacksmith, armed with a blunderbuss, and a case of pistols in his surtout-coat pocket ; and James Love, Mr. Knox's own servant, armed with a fusee ; Mr. Knox himself being also armed with a case of pistols in the coach.

Mr. Knox was so confident that Macnaghton, notwithstanding his declarations and menaces against him and his family, would not dare to attack him when he saw him attended by persons properly armed, that neither Mr. James Knox, nor young Mr. Knox, nor either of their servants, were armed at all ; nor did Mr. James Knox think it necessary for him to keep pace with the coach ; he therefore, with his servant, went on before, and Macnaghton saw him pass by the cabin, where he was lying in wait, about eleven o'clock.

This served them as a signal to prepare more immediately for action, as they knew the rest of the family could not be far behind. At about half an hour after eleven they saw young Mr. Knox and his servant on horseback, both of whom they suffered to pass on, and immediately afterwards discovered the coach at about twenty yards distance behind, and close behind the coach the two attendants, who were armed.

As soon as the coach had passed the door of the cabin, Macnaghton and two of his accomplices rushed out, each armed with pistols and a gun. Macnaghton presented his gun at the coachman, and threatened him with instant death if he did not stop the horses ; the coachman thus terrified complied, and Macnaghton's servant coming up to him presented his gun, and threatened that if he offered to put his horses on again he would shoot him. The coach being thus stopped and detained, Macnaghton hastened round the horses' heads to the coach-door, in order to force out the lady ; but Mac Cullough, the blacksmith, coming up to him at that instant and presenting his piece, Macnaghton fired at him and wounded him in the hand ; the fellow, however, snapped his blunderbuss, but it unfortunately missed fire. Macnaghton then fired a second shot at him, which wounded him in the knee and the groin, and totally disabled him. In the meantime Mr. Knox snapped a pistol at Macnaghton from the coach-window, but the cock flying off, that missed fire also. While

this was doing, one of Macnaghton's accomplices was charging guns in the cabin, and handing them out ; and Macnaghton having received one from him in the room of another he had discharged, advanced upon the fore part of the dunghill opposite to the cabin, towards that side of the coach where Miss Knox sat, and with his gun presented fired into the coach, and lodged no less than five bullets in her left side ; he then went round by the wheels to the other side of the coach, but as he was going about, James Love, Mr. Knox's own servant, fired at his back from behind a turf-stack, and lodged three swan shot in his shoulders, Mr. Knox at the same time firing again from the coach, but without effect. Macnaghton, though he felt himself wounded, having got round, received another pistol from the cabin, and fired that also into the coach, with an intention to kill Mr. Knox, but providentially the shot missed him. After this Macnaghton and one of his accomplices fired each of them a random shot through the coach, probably with a design to kill every creature that was in it, for all the guns were loaded with swan-shot ; yet in all these discharges the poor young lady only was wounded.

After the last random shots through the coach, Macnaghton and his accomplices walked off towards Mr. Irwin's, without any apparent concern, and without certainly knowing what mischief they had done. What became of young Mr. Knox and his servant during the rencounter does not appear ; but it is supposed that being unarmed, they were kept at bay by the fellow that overawed the coachman ; nor does it appear that there was any interchange of words between the parties during the whole time.

As soon as Macnaghton and his accomplices were gone off, young Mr. Knox, who was well mounted, rode away to Strabane, about three miles distant, where the Londonderry troop of Sir James Caldwell's regiment of Inniskilling Light Horse were quartered, to obtain their assistance in the pursuit.

Miss Knox was carried into the cabin, where she expired in about three hours. She had received five wounds, three of which were mortal. The murderer and his accomplices fled, but the country was soon raised in pursuit of them, and amongst others some of Sir James Caldwell's Light Horse, who were directed to search the house and offices of one Wenslow, a farmer, not far distant from the scene of slaughter. But though some of the family knew he was concealed there, they pretended ignorance ; so that Macnaghton might have escaped, had not the corporal,

after they had searched every place, as they imagined, without success, and were going away, bethought himself of the following stratagem. Seeing a labourer digging potatoes in a piece of ground behind the stables, he said to his comrades in the fellow's hearing, "It is a great pity we cannot find this murderer; it would be a good thing for the discoverer, he would get three hundred pounds." Upon which the fellow pointed to a hayloft. The corporal immediately ran up the ladder and forced open the door; upon which Macnaghton fired at him and missed him. By the flash of the pistol, the corporal was directed where to fire his piece, which wounding Macnaghton, he ran in and seized him, dragged him out, and instantly tied him on a car, and conducted him to Lifford gaol. Here Macnaghton remained in the closest confinement, entirely deserted by all his friends and acquaintance, until his trial, which commenced the 8th of December, 1761, when he was arraigned, with an accomplice, called Dunlap, before Baron Mountney, Mr. Justice Scott, and Mr. Justice Smith, who went down upon a special commission to try the prisoners. The counsel for the prosecution were Mr. Hen and Mr. Helen.

Macnaghton was brought into court on a bier, rolled in a blanket with a greasy woollen nightcap, the shirt in which he was taken being all bloody and dirty, and a long beard, which gave him a dreadful appearance. In that condition he made a long speech, and complained in the most pathetic manner of the hard usage he had met with since his confinement. He said "they had treated him like a man under sentence, and not like a man that was to be tried. He declared he never intended to kill his dear wife (at saying which he wept); that he only designed to take her away; that he would make such things appear upon his trial, as should surprise them all." But when the trial came on, all this great expectation which he had raised in the mind of every one, came to nothing. The trial lasted five days. The jury found both prisoners guilty, and they were sentenced to death.

It seemed as if every stage of this fearful tragedy was to be marked by some peculiar feature of horror. The very execution was extraordinary. The common people had conceived the most false notions with regard to Macnaghton's conduct, and looked upon him as no more than the victim of a gallant attempt to obtain lawful possession of his own wife. The consequence ensued, that there was not a carpenter to be found in all the country about Strabane that would erect a gallows for his execution; nor could any other person be procured to undertake it for hire.

The Sheriff therefore, was obliged to look out for a tree which might serve for the purpose ; and upon a tree he must at last have been executed, if the uncle of the unhappy young lady, and a party of gentlemen, who were moved with indignation at the thought of being reduced to the necessity of such an expedient, to execute a wretch who had committed a murder with every possible aggravation, had not themselves made a gallows and set it up.

It was erected upon a plain between Strabane and Lifford ; and on the fifteenth day of December, about one o'clock in the morning, Macnaghton, who had been fettered upon his condemnation, was brought down from his room in the prison, in order to have his fetters taken off ; but there was not a smith to be found that would do it : and if one of those who had refused the office had not been compelled by a party of the Light Horse to perform it, the criminal must, contrary to law, have been executed with his fetters on : the Sheriff was obliged to send for the executioner, a very old man, from Cavan.

The execution of Macnaghton and Dunlap was then effected, but not until the former had broken the rope, and was hung up a second time. The bodies were buried together in one grave, behind the church of Strabane.

## THE TRIAL OF JOHN BARBOT, AN ATTORNEY, FOR MURDER AT ST. CHRISTOPHER'S IN THE WEST INDIES.

THE unfortunate gentleman who lost his life in this melancholy affair was Mathew Mills, Esq., a possessor of considerable landed estates in St. Christopher, Antigua, and other West India Islands. He had for many years resided at Richmond in Surrey, and had married there the daughter and coheir of Colonel Soulegre, of Antigua, whose other daughter and coheir married Sir Stephen Theodore Janssen, Bart., of Wimbledon, Lord Mayor of London in 1755, and afterwards Chamberlain of that city. Mr. Mills going over to St. Christopher's to superintend his property met his fate as here recorded.

Mr. Barbot was born in London, where his father was a working silversmith, a man of some substance in the world, and of a good character. At about fourteen years of age, he was put clerk to Mr. Delaport, an attorney in Staple-inn in London; with whom he served a clerkship for the usual term of five years. After that time expired he came from England, in the year 1746, in character of clerk to a gentleman of the profession of the law in Antigua, and subsequently setting up there he at first obtained considerable practice, but afterwards gradually lost his business through his own idleness and neglect. He was a clever, but from his peculiar pert and forward manner, a very unpopular man. He was of remarkably diminutive size.

On Thursday the 4th of January, 1753, a Bill of Indictment was found by the grand inquest for the island of St. Christopher, against John Barbot, gentleman, for the murder of Mathew Mills, late of the said island, Esq.

On the following day the prisoner was arraigned before the Court of Gaol Delivery held at Basseterre in St. Christopher's, which court was presided over by the Hon. William Matthew Burt, President of his Majesty's Council in the Island. The prisoner, after pleading not guilty, was allowed, on his request, Mr. Frye, as counsel to argue points of law and to examine and cross examine for him.



The case was stated as follows, by John Baker, Esq., the Solicitor General of the island.

Sol. Gen.—“ May it please your honours, and you gentlemen of the jury ; the prisoner at the bar, John Barbot, stands indicted of no less a crime than that of murder ; the murder of one Mathew Mills, Esq., I say, of *one* Mathew Mills ; because such is the style and form of the indictment ; and not as supposing you are, or can be any strangers to the name or character of that unfortunate gentleman : for who the deceased was, his rank and distinction in life would not permit any one in these parts to be ignorant ; and as to what he was, if there were any who knew it not in his life-time, they must necessarily have learned it from the general sorrow and concern, and the many hearts that are yet bleeding for his death.

“ Gentlemen, as to the murder of which the prisoner stands indicted, it is perhaps the hardest to be accounted for, as to its causes and the motives to it, of any intended, any concerted event, that has ever fallen out within the compass of your knowledge and experience. The two grand and ordinary motives to the committing of murder, are interest and malice. But, for the former of these, there does not seem to have been the least prospect of any advantage to be reaped by any one whatever, by the death of the deceased : though how many, and in how grievous a degree, will be sufferers by it, God knows : and for the other motive, malice, one would have thought his amiable character, and most unexceptionable conduct towards every one, must have secured him against the enmity and ill-will of any person living ; and even still we may venture to affirm, that no good man was, or could be, his enemy : yet that he had an enemy, (one, at least, if not more ; I say, that he had, at least, one enemy) is but too apparent from the manner and circumstances of his death : and I believe your consciences will be abundantly convinced by the evidence, that that enemy was the prisoner at the bar ; the consciousness of whose guilt, if that should be the case, must be greatly aggravated by this consideration, that he has robbed the world of a man, whose loss he cannot make good to it in himself ; and that there is no probability, that in the course of twenty such lives as his, he should ever be able to make amends to the great number of persons whom he has rendered so unhappy, and made such sufferers by it : so diffusive a ruin, so extensive a mischief has been accomplished by a single stroke of so insignificant a hand !

“ Gentlemen, there are few murders committed, of which it is not with

some difficulty and labour, the authors are found out ; for, as the more atrocious the crime, and consequently the greater the punishment attending it, so the greater the caution and secrecy used in the committing it, and the manner and means of putting it in execution the more carefully studied and concerted, in order to avoid a discovery, and escape the hand of justice.

“ And yet, gentlemen, in most cases of murder, (for, indeed, in some few instances, Heaven has thought fit to reserve the whole of vengeance to itself ; but, I say, in most cases of murder) it has pleased Providence by some mark or other to point out the guilty person ; and all the care and foresight of the coolest and cunningest offenders, have not been able to guard against some token, some unthought-of circumstance, which has left a door open to a discovery, when they imagined they had barred up all access to it.

“ Thus, gentlemen, in the present case, though the prisoner at the bar flattered himself he had so effectually laid his measures, as perfectly to secure him against (not the knowledge and discovery of his crime, for that he knew there were those about him who could, and must, make public ; but against) the punishment which he knew by law was due to it ; by taking care to have none present when he committed it, who could be legal witnesses against him ; yet I believe all his management and precautions of that sort will stand him in very little stead ; since, by evidence unquestionably legal, so many and evident tokens of his guilt will appear ; such a train of circumstances will be laid before you of various kinds, as, when taken and considered together, will give such light and strength to each other, as to convince the most incredulous persons, and satisfy the most scrupulous and tender consciences, that the prisoner at the bar was the person by whose hand the deceased was murdered.

“ And this, gentlemen, as it is legal evidence, so it is sufficient too, if it be such as satisfies your belief, that he committed the fact. And indeed this is the best and only evidence, which we can hope to meet with in almost all cases of murder ; where the caution and secrecy which I observed to be used in the committing it, make a necessity of investigating the truth by painful steps, and of tracing and hunting out the murderer, by following the track of circumstances, as we can find light enough to discern and pursue it. For, if the bare taking care to have no persons present at the time of committing the most execrable crimes

should avail, in spite of the plainest and strongest circumstances pointing out the criminals, to screen them from public justice, it would hardly ever be possible, but extreme accident, to convict the most flagrant offenders ; and nothing were easier than to commit the worst of crimes with absolute safety and impunity.

“ Gentlemen, it were a thing greatly to be wished, both for your sakes and the sake of this island, that it had not been made the scene of this abominable act : so should you have been saved the disagreeable task that is now imposed on you ; and the island the odium, which will perhaps unjustly, as well as unfortunately, be thereby brought upon it ; I say, unjustly, because, as you will hear from the evidence, though the matter was executed here, it was conceived and concerted elsewhere. The arrow was indeed thrown in this island ; but it was first dipped in the poison that was generated in another ; where, as you will hear, gentlemen, the prisoner at the bar was exercising himself in rehearsing this fatal tragedy, and making himself perfect in his part of it, some days before it was acted.

“ Gentlemen, as I before told you, the motive to this unhappy affair is hard to be accounted for : yet all that can be conceived or imagined to have been a provocation to it, with the substance of what else you will hear in evidence in proof of the indictment, I shall relate to you ; and though the provocation you will hear of was the slightest and strangest that was perhaps ever known, to the committing an act of this kind, yet, I believe the prisoner will find it a difficult matter to assign a stronger or a better.

“ You must know, gentlemen, that on Tuesday the 7th day of November last, there being a public sale at the town of Charles-town in the island of Nevis, of an estate in that island, commonly called Bridgewater’s, the prisoner at the bar offered himself as a purchaser, and accordingly bade for it the sum of 2,510*l.* sterling. The deceased, who was largely interested in this sale, as having a demand for a considerable part of the purchase money, and who, as well as many others, was not only surprised to hear the prisoner bid a sum of money so far beyond what all the world must be sensible he was able to make good, but also justly offended at the prisoner’s behaviour, which tended to throw every impediment in the way of the sale that he could, said, he desired that there might not be so much cavilling, and that no boy’s play might be used on the occasion ; for that this estate had once before been sold, and the pur-

chase money not paid ; upon which the prisoner, with great heat, and a pertness peculiar to him, stepped up to the deceased, and in a modish phrase told him, He expected to be treated like a gentleman. To which the deceased only replied, He should use him and every one as such.

“ And this, gentlemen, is all the provocation which, on all the recollection and enquiry that can be made use of, it can be found was ever given by the deceased to the prisoner ; since there appear not the least traces of their having long before spoken to each other, or had any intercourse on any occasion at all ; and it is almost a certainty that they never spoke to, or saw one another afterwards, till the morning of the death of the unfortunate deceased ; but this, gentlemen, according to the very high conceit the prisoner had of himself, and his own merit, was, it seems, such an indignity, as nothing less than the taking away so important and valuable a life, as the deceased's could atone for. And of this he was so full, and so blinded by his purpose, that on the Friday following, the 10th of the same November last, he declared in the street of this very town, That there was a certain gentleman in this island, whom he would either kill, or be killed by, in less than a fortnight ; and indeed in less (and very little less) than that time the deceased was killed ; and (as I believe you will by and bye be perfectly convinced) by the prisoner at the bar. What could induce the prisoner to make this strange and unnecessary declaration of his intention, is difficult to say ; nor is it at all satisfactory to be accounted for, but from that fatality which it has pleased Providence shall hang upon guilt, to convince men, that what he thinks proper shall be revealed, it shall not be in their power, with all their care and precaution, to keep secret. Gentlemen, in pursuance of this declaration, and in the interval between that and the 19th of the same month, when (as it is laid in the indictment) the deceased was killed ; the prisoner took an opportunity to exercise himself in firing with pistols at a mark ; and, as the event has proved, became but too apt a proficient at it ; having fatally improved himself to such a perfection in it, as to enable him to accomplish his design on the deceased, who was found dead of a wound, apparently given from a pistol, between 5 and 6 of the clock on Sunday morning the 19th day of November last ; the very night before which, as you will hear, the prisoner, in a very hasty manner, made his last will at a public tavern in the town of Charles-town in Nevis, where he delivered it into the custody of one who was to have some concern in it. Gentlemen, from these circumstances and this behaviour of the prisoner, pre-

vious to the murder, I believe no man, for his own private satisfaction, would look further for the person who committed it, than the prisoner at the bar. But from other more numerous, and much stronger circumstances, which you will likewise hear from the evidence, and which I shall first open to you, I think all shadow of doubt, whether it was the prisoner who committed it, must be entirely taken away. For, gentlemen, the night before the committing the fact, the prisoner, after having thus executed his last will, and delivered it out of his own custody, went from the tavern into the country with one Dr. James Webbe, at whose house he slept, or at least, made appearance of sleeping; and accordingly, between 9 and 10 o'clock, he bade the doctor and his family a good night, and retired to the chamber allotted him, under pretence of going to bed; but in the morning when the doctor arose at his usual hour, he found to his very great—I beg pardon; I was going to say, to his very great surprise; but that I cannot take upon me to say; but however he did find, that the prisoner had gone from his house; and about 8 or 9 o'clock in the morning he saw him riding up to his house on his (the doctor's) own horse, and with his own negro boy attending him. Where he had been while he had thus withdrawn himself, and what he had been doing, you will presently hear. Gentlemen, about five o'clock, or very little after, that same Sunday morning, as one John M'Kenley, who is an overseer at the plantation of Mr. Spooner near Frigate-Bay, was lying on his bed (for he had risen, it seems, some time before, and had been abroad, but was now lying down again; when) a negro boy whom he very well knew, called Coomy, who belonged to, and usually ran with deceased when he went on horseback, came hastily into the chamber, and even leaped on the bed, and with great emotion and seeming fright, told M'Kenley, that his master was fighting on the Bay with a gentleman come from Nevis, and that he feared his master was killed; the negro then instantly went out of the room, and mounting his master's horse, on which he had rode thither, galloped back to the Bay again. M'Kenley was going to saddle his horse to follow him; but thinking that would take up too much time, and it not being more than a quarter of a mile, or thereabouts, to the place, he walked away as fast as he could to the place, where, when he came, he found Coomy supporting his master against his knees; but on coming close to him, he found the unhappy gentleman was actually dead, though still warm; having just breathed his last. M'Kenley then asking Coomy, who it

was that had killed his master? the negro answered, it was Mr. Barbot, who was come from Nevis, and was then going back again; and added, if you will go to the sea-side, I believe you will see him; for I am sure he cannot be gone far. M'Kenley then ran to the beach, which was about 50 yards from the spot where the deceased lay; but with a rising bank between; and there saw a canoe with four oars and a paddle, rowing from the shore towards Nevis, with somebody dressed in white sitting in the stern; but by the person's back being towards him, and from the great consternation he was in at the unhappy event, having himself a little while before been a servant to the deceased, he did not distinguish who the person was. However, that gentleman, will soon be made appear to you; for about half an hour after, as the canoe was in its way to Nevis, it was met by a schooner coming from Montserrat to this port; the master of which very well knew the prisoner, and saw him sitting in the canoe, dressed in a white coat, and having on a laced hat; he will show you that there was no other canoe then in sight, than this one, which he pursued with his eye till he saw it near the bay at Nevis, called Molton's bay, where the prisoner was seen to land out of it about 7 of the clock in the morning, by persons who knew the canoe, and two of the principal negroes who rowed it. From thence, gentlemen, the prisoner walked up to the house of the plantation called Bridgwater's, which was about half a mile distant from the sea, and there inquiring for Dr. Webbe's negro boy, called Pope, ordered him to saddle the horse; meaning, as you will hear, the doctor's horse, which, as you will find, the boy had brought thither about midnight, under the pretence of looking for his master, though he knew he was then at home. From hence, gentlemen, the prisoner rode back to Dr. Webbe's, where he had pretended to go to bed the night before, and which is about three miles distant from Bridgwater's; and there dismounting, finished his glorious expedition, and rested from his worthy labours. I must not omit, gentlemen, that a very sensible negro fellow, belonging to the canoe, as soon as they came back to Nevis, seeming greatly dejected and thoughtful, and his master pressing him to know the occasion of it, the fellow answered, He was afraid Mr. Barbot had done some mischief; which is thus far material, that it was said before the news came from St. Christopher's to that island, of the unhappy affair.

“Gentlemen, as you may perceive by what I have said, and will still more plainly find from the evidence, the prisoner at the bar, whether

to secure a further chance for his escaping the punishment due to his crime, or, it may be, despairing of other means or opportunity to accomplish his purpose against the deceased, took care to draw him to a place of appointment, in order to give the act he committed the favourable construction of a duel. But, in the first place, I believe you are not to be told, that were it really so, or were it ever so fair a transaction, as it is generally termed, of that sort, that, in the law, by which you upon your oaths are to try the prisoner, is absolutely murder. Should that appear or be believed, how far it might be an argument for mercy or pardon, is the business of another place, and of other persons : but the serious and solemn business of this day, and of you, gentlemen, is upon your oaths to say, whether you believe, upon the whole matter, the prisoner killed the deceased or not. And in the next place, gentlemen, I believe you will be too well convinced by the evidence given, that the notion and form of a duel was only meant as a cover and a sanction to the intended murder ; and that the deceased was unquestionably killed before he was provided, or could have a chance of worsting the prisoner or defending himself ; for you will find, gentlemen, that by the wound given, which was in the side, and the course it took along his stomach, the deceased could be in no offensive posture : and it is plain his pistols neither were, nor had been, loaded. And now, gentlemen, we shall call the witnesses to these several facts which I have mentioned, from whose mouths, and on whose oaths, you will have a confirmation of what it was my duty thus to open to you, in order the better to conduct your attention to the proper and material parts of the evidence."

The evidence adduced on the part of the Crown coincided with the statement of the learned counsel and was unshaken by the prisoner or his advocate.\* It therefore becomes unnecessary to repeat it here, further than to give the exact medical testimony, which is important as contradicting the fact of a duel as confessed by the prisoner after his conviction.

Dr. Hamilton and Mr. Edwards were sworn.

Mr. Horne, counsel for the crown.—Dr. Hamilton, you were sent for, I think, to inspect the body of the deceased ? Dr. Hamilton.—Yes, Sir, I was sent for on Sunday the 19th of last November by the coroner, to view the body of the deceased. When I came to Mr. Colhoun's, where the body lay, I found that the deceased had received a wound on

\* The negro slaves were not called as witnesses ; since, in consequence of their state of bondage, their evidence was inadmissible.



the right side, which must have been given him by a ball out of some fire-arm.

Whereabout on the right side?—I cannot describe it better than thus ; by drawing a straight line directly from the pap four inches downwards, and then carrying it four inches towards the back. In that place was the wound.

Sir, will you please to put your finger on the place, as near as you can guess, where the wound was received?—It was just here [placing his finger on his own side].

Now, go on, Sir, if you please.—I then, with the assistance of my son, Mr. Edwards, opened the body, and found that the ball had entered between the two last false ribs, and splintered one of them, and had penetrated the body obliquely from the right to the left side, and had wounded the fore-part of the liver on the left side ; I found too, that in passing it had wounded a large blood-vessel.

Do you think the deceased could have received that wound if he had been standing in a posture of defence?—No, I think he could not ; for the situation of the wound was such, that had he been in a posture of defence, he could not have received it in that place ; and from the course the ball took (which was towards the fore part of the left side of the body) it is evident, I think, that the deceased could not have been in a posture of defence.

Do you think that that wound was the cause of his death?—Yes, I am certain it was.

Did you find the ball?—No, I searched for it, but could not find it. I believe it had fallen into the abdomen, which was so full of blood, that there was no possibility of finding the ball, unless we had taken out all the bowels ; and it was so late, that the jury, satisfied on my report that the wound must have been given by a ball discharged from some fire-arm, and that it was the cause of the deceased's death, did not think it necessary to look any farther for the ball.

Mr. Horne.—Mr. Edwards, you assisted Dr. Hamilton in opening the body of the deceased ; can you give the Court any farther information of the nature of the wound than what the doctor has already related?—Edwards. No, Sir, I can say no more than what Dr. Hamilton has already related.

Barbot's defence was that he was not at Bassaterre but at Nevis when it was said he made the declaration about killing alleged, and that there was no positive or direct proof of his having committed the crime. He



called some witnesses to the fact of his being, as he asserted, at Nevis, but they did not speak very firmly on cross-examination, and they were contradicted by further evidence on the other side.

The Jury after half an hour's consultation found Barbot guilty, and he was sentenced to death by the President.

The prisoner then addressed himself to the Court in this manner.

Barbot.—May it please your honours; since it can no longer avail me to conceal the fact, I will make a frank confession of the whole.

That I did kill Mr. Mills, is most true.—That I killed him fairly, is equally true—fairly according to the notions of honour prevailing among men. From these false principles of honour I was induced to engage in the unhappy duel, which in its consequences deprived the world of so worthy a gentleman, and has involved me in these unhappy circumstances. False I am convinced they are, notwithstanding the countenance they receive from the daily practice of the world.

I make no doubt but that the words which Mr. Carew and Mr. Mills have sworn, did pass between the deceased and myself at the sale of Bridgwater's estate, though I cannot now recollect that they did. But this was not the cause of the duel.

The provocation I received from Mr. Mills was this :

After I was declared the purchaser of the estate, I sat down to draw the bills of exchange for the deposit. While I was about them, Mr. Mills came and looked over me, and observing that I had made them payable at ninety days' sight, he objected to them, and asked me if I knew what I was about, and insisted on having the bills drawn at a shorter sight, to which I answered, that I was sure he must know it was usual for bills of so large a size to be drawn at a long sight. I told him further, that I apprehended he had no right to object to the bills at all, if the marshal agreed to accept them as they were drawn. To this Mr. Mills replied, 'Sir, you are an impertinent puppy.' I took no notice of this till after I had finished the bills, and then I took him aside, and spoke to him to this effect. That I little expected to receive such treatment from a gentleman of his known politeness and good-breeding; that, as I was not conscious of having deserved it, I desired he would make me some apology for it. He replied, that he would not make me any apology; but that, if I thought myself injured, he was at my service when properly called upon. I made him no answer, but immediately left him; and, on the Thursday following, I wrote him a letter, telling him

that since he had done me the honour to assure me he would be at my service whenever I should call upon him, I expected he would meet me by dawn of day the next morning, near Lowland Church, armed with a case of pistols only. Mr. Mills sent me an answer to this ; and there were six letters in all passed between us, three from him, and three from me, which I do not now recollect, for I destroyed them, though I believe I shall be able to remember the substance of them. The last I received from him was, that he would meet me at the time and place appointed, which was Frigate-Bay. The night before the duel, I made my will at Mr. O'Donnell's, and delivered it to Dr. Webbe. The doctor put it in his pocket without reading it, and we immediately went home to the doctor's house, where I went to bed soon after I arrived. At about one in the morning I heard the doctor up, and called to him, he answered me, and went out ; and as soon as he came in and returned to bed, I got up and went with Pope to the stable, and saddled one of the horses, which I immediately mounted, directing the boy to follow me ; and rode very fast till I passed Mr. Pinney's, where I was overtaken in a very hard shower of rain, that wet me through all my clothes. I rode with all the speed I could till I came to Molton's-Bay, where I had ordered a canoe to wait for me. At first I could not perceive the negroes ; but on looking round, I saw them lying under a sail. They immediately got ready, and I jumped into the canoe, and ordered Pope to carry the horse to Bridgwater's estate. The night was very tempestuous, and the canoe was several times near filling with water. I had a phial of rum with me, which I had filled at Dr. Webbe's, and finding myself excessively cold and chilly, I drank a dram of it. When I got to Frigate-Bay, I jumped out of the canoe and ordered my boy to follow me with my trunk, in which were my pistols. I then seated myself under a privet-hedge, and sent my boy to the entrance of the Basseterre road, to wait for Mr. Mills's arrival. In the mean time I examined my pistols, and fresh primed one of them. I had no sooner done this than I heard the footsteps of a horse. I arose immediately, and saw Mr. Mills riding fast up to me. As soon as he came near, we saluted each other ; after which he immediately alit, and took his pistols out of the holsters, and primed them. While he was priming his pistols his horse's head being between me and himself, I told him, I had, as I had wrote to him, brought down the letters he had wrote me, and I doubted not he had likewise with him those I had wrote him, I then took out the letters from my pocket-book,

and offered them to him, he made me no answer, but hastily ordered his boy to lead away his horse, and putting himself in a posture of defence, presented his pistol at me. I gave his letters then to my boy, and ordered him, in case I should drop, to give them to Mr. Mills. I immediately then presented my pistol at him ; which he observing, cried out, Stay, stay ! I instantly dropped my pistol, and Mr. Mills said to me, Stay, let me give the letters to the boy ; which he immediately did ; and then recovering his posture again, himself on one side the road, and I on the other, we presented our pistols at each other. I observed Mr. Mills drew his pistol near his eye, from which I imagined he was near-sighted. About four or five seconds after I had presented, I fired ; and Mr. Mills cried, Sir, you have killed me, you have killed me, Sir. I was extremely shocked to see him fall, and I went up to him and said, Sir, I am heartily sorry, I pray God to bless you, but I can stay no longer here. I then ordered his boy to take care of him, and immediately went down to the canoe and jumped in, and ordered the negroes to row as fast as ever they could. I asked my boy, when we were in the canoe, whether Mr. Mills's pistol had snapped. He told me it had ; but for my own part, I neither heard it snap, nor saw the flash.

The letters Mr. Mills wrote me on this unhappy occasion were extremely polite ; and those I wrote him were in as respectful terms as I was master of. It was Mr. Mills's character, his rank and distinction in life, that engaged me in this unfortunate business ; for I should not have accepted the challenge from any man inferior to him.

For myself, my concern for the unhappy fate I shall soon meet with is little, compared to that I feel for the sorrow and affliction it will bring on a tender parent ; and the grief and anguish the consequences of this unfortunate duel will occasion to an unhappy lady, when she hears the shocking news of her husband's death.

I must in justice to Dr. Webbe, acquit him of any concern in the matter. He is perfectly innocent of the cause of my quarrel with Mr. Mills ; neither did he know any thing of the duel, either before or after it. One gentleman was acquainted with it ; a gentleman whom I asked to be my second, which he refused. I beg to be excused mentioning his name, but he is neither of this island, nor of Nevis.

I am obliged to your honours for the candour and impartiality you have shewn in the course of my trial. You, gentlemen of the jury, I must acknowledge, have acted like upright honest men. Had I been in your place, I should have found the same verdict you have done.

I have nothing now to ask of your honours, but that you would please to allow me a little time to settle my affairs, and to make my peace with God.

To which Mr. President replied, "To be sure, you shall have a proper time allowed you."

On Saturday the 20th of January, 1753, the prisoner was executed at the town of Basseterre, according to the sentence pronounced against him.

At the place of execution he delivered the following paper to the Provost-marshal.

"My friends and fellow-subjects :

"You see me this moment a dreadful instance, how much the human mind may be led away and imposed on by false and empty notions affecting reputation in the estimation of weak and fallible men ; even so far as to commit the highest crimes in the sight of God, and daringly to violate all human laws, calculated for the good and safety of society. Let my example be a means to teach men to act more consistently with their reason ; and let my punishment deter them from the commission of crimes like mine. And then my death, and that of the unhappy gentleman who fell by my hand, will, I hope, by the benefit the world will receive from the example, make some amends to the community for the loss of two subjects, who might, had it not been for the unhappy fate which attended them, have lived not unuseful members of society."

## THE TRIAL OF WILLIAM CHETWYND, A SCHOOLBOY.

**WILLIAM CHETWYND**, who at the age of fifteen was the subject of this trial, was a scion of the ancient and honourable family of Chetwynd. He was son of Walter Chetwynd, Esq., of Grendon, in Warwickshire, and Rudgley, in Staffordshire.

The other unfortunate youth who was the victim of the distressing event was Thomas Wayte Ricketts, one of the twenty-seven children of Major-General George Ricketts, of Canaan, in Jamaica. His younger brother, another of that numerous issue, was father of the present Viscount St. Vincent. The family of Ricketts was settled for many generations in Staffordshire, and is now represented by Thomas Bourke Ricketts, Esq., of Coombe, Herefordshire, who is the grand-nephew of the Thomas Wayte Ricketts of this trial.

The fatal occurrence, as detailed in the evidence, took place at an academy, of high repute in those days, kept by Mr. Clare.

The trial took place at the Old Bailey, in the October sessions of 1748, before Sir William Lee, Lord Chief-Justice of the Court of King's Bench, Mr. Baron Reynolds, and the Recorder of London, Mr. Serjeant Urlin.

The counsel for the crown were, Mr. Serjeant Wynne; Mr. Moreton, afterwards Recorder of London; Mr. Erskine; and Mr. Purcas.

The counsel for the prisoner were, Mr. (afterwards Sir Richard) Lloyd; Mr. (afterwards Mr. Baron) Legge; Mr. Hume Campbell; Mr. Hatsell; and Mr. Stracey, afterwards Recorder of London.

William Chetwynd was indicted at common law for the murder of Thomas Ricketts. He was likewise indicted on the statute of stabbing.

He was a third time indicted on the coroner's inquisition, for feloniously slaying the said Thomas Ricketts.

The counsel for the prisoner desired, that as the prisoner had the mis-

fortune to be extremely deaf, he might have the liberty of standing at the inner bar ; which the court readily granted.

The counsel for the prosecution having opened the several indictments, and set forth the circumstances relating to the fact, they proceeded to examine their witnesses.

*Master William Hamilton sworn.*

Counsel.—I think you are one of the young gentlemen who boarded at Mr. Clare's academy in Soho-square ?

Hamilton.—Yes, I am.

Were you boarded there last September ?—Yes.

Was the prisoner at the bar at board there then ?—Yes.

Do you remember one Mr. Thomas Ricketts being there ?—Yes, I was present when the prisoner and Mr. Ricketts were together in the room.

What time was it ?—It was on the 26th of September.

Who was in the room when you went in ?—There was one Samuel Malcher, Thomas Ricketts, and Mr. Chetwynd ; they were the only persons in the room.

What was the conversation turning upon ? What were they talking about when you came into the room ?—Mr. Chetwynd had got some cake, and Mr. Thomas Ricketts desired Mr. Chetwynd to give him a piece of his cake ; Chetwynd denied it him ; I asked him for a piece, and he likewise denied it me.

What happened then ?—Hannah Humphreys came into the room about that time. Mr. Chetwynd took the cake, and cut a piece off, and laid the piece upon the bureau, and locked the other up ; with that Mr. Ricketts came and took the piece of cake off the bureau ; Mr. Chetwynd asked him for it ; and Mr. Ricketts, laughing, went up to the maid, and told her that he had taken a piece of Mr. Chetwynd's cake ; with that Mr. Chetwynd came up to him, and demanded it of him again.

Did Mr. Ricketts deliver it to him again ?—No.

Did Mr. Ricketts refuse to deliver it ?—Mr. Ricketts did not refuse to deliver it.

What answer did Mr. Ricketts give Mr. Chetwynd, when he asked him for the cake again ?—He gave him no answer, but continued laughing.

You mean he was laughing with you, not laughing at the prisoner.

Prisoner's counsel.—That is nice indeed !

Prosecutor's counsel.—What happened next after this? Hamilton. After Mr. Chetwynd demanded the cake, and Mr. Ricketts gave him no answer, he struck him immediately with the knife which he had in his hand.

Was it back-handed?—It was back-handed.

Jury.—I desire he may speak a little louder: Was Ricketts behind him when he struck him with the knife?—Mr. Ricketts's side was to Mr. Chetwynd's. He was standing by his side.

How near were you to them?—Not very near.

Where did you stand?—I stood a little way before them.

Where was this blow given?—Just hereabout upon the side (pointing to the right side of the stomach).

Did you see him pull the knife out?—I did not see him pull it out.

How do you know it was a knife that he struck him with?—Because it was the same knife that he cut the cake with.

What followed upon that?—Mr. Ricketts cried out he was afraid he was stabbed.

Did Mr. Ricketts fall down?—No; he laid his hand upon his side, and said he was stabbed.

What sort of a room is it?—It is a pretty large room.

What part of the room did the scrutoire stand in?—It stood in the corner of the room by the window; the window and the scrutoire were on the same side.

What kind of a knife was this?—It was a sort of a French knife.

Was it a pen knife? or what knife was it?—It was a pretty large knife.

Was it a clasp knife?—Yes.

Did you see Chetwynd cut the piece of cake?—No.

Court.—Did you see the deceased take it away?—Yes.

Did Chetwynd see him take it away?—I cannot tell that.

The counsel for the prosecution having done with this witness, he was examined on behalf of the prisoner.

Prisoner's Counsel.—Mr. Hamilton, if I understand you right, the deceased and you asked Mr. Chetwynd for a piece of cake, and Chetwynd refused it?—Hamilton. Yes.

So he was not willing to give either of you any?—No, he was not.

I think you said Mr. Chetwynd took the knife out of his pocket?—I said he cut a piece of cake; I did not say he took the knife out of his pocket.

I think it was a cake that they call a simnel; was it not?—Yes, it was.

I think they are very hard, with a crust on the outside, and difficult to be cut?—It was pretty hard.

Then that may possibly require more strength than he had in one hand, to cut it; he cut it down, did not he?—I did not see him cut it.

You said he took his knife and cut it?—Yes he did cut it.

Then tell me whether or no (I am sure I will do fairly, God forbid that I should do otherwise) Mr. Chetwynd did not refuse to give any of the cake to Mr Ricketts?—Yes, he did refuse it.

Whom did he cut the cake for? was it not for himself?—I believe it was.

Then he did not cut it for anybody else; I think you said, he laughingly told the maid he had got it?—Yes.

And upon that Mr. Chetwynd demanded it from him again, and he laughed, but did not deliver it?—He made him no answer, but did not deliver it.

Did he ask him to give it him again before this unhappy accident happened?—Yes, he did.

Pray tell me whether he did not, besides his laughing, endeavour to keep the cake from him?—I did not observe that.

Please to tell me, whether, as you were schoolfellows together, you were not all good friends?—Yes, we were.

Which of the two was biggest?—Ricketts was larger than Chetwynd.

I am obliged to the gentlemen on the other side, for intimating that Mr. Chetwynd gave Mr. Ricketts a piece of cake before; I would ask you whether Mr. Chetwynd did not give Mr. Ricketts a piece that morning?—I heard he did.

How long was that before this thing happened?—I do not know how long it was. This happened about one o'clock.

When this unfortunate thing happened, what did Mr. Chetwynd say immediately upon it?—Really, I do not know.

I think, Sir, you were telling the Court of a French knife; I own I do not know what they are; but the question I would ask you, is whether most of you young gentlemen do not carry these knives in your pockets?—I have heard so; it was a knife that he always had.

And I suppose many of you had such knives?—I cannot tell as to that, Sir.



I am obliged to you for the candour you have used in your evidence ; I have no more questions to ask you.

Court.—Can you recollect how these young gentlemen lived together, whether there was any ill will between them, or whether they lived in a friendly manner?—Hamilton.—I think they lived as the other scholars did.

Court.—Do you apprehend there was any malice between them?—I never knew of any malice between them.

Court.—How did the young gentleman behave after he had given that wound?—I did not see him afterwards.

Another young gentleman gave similar evidence, which was farther confirmed, as follows, by the maid servant, Hannah Humphreys, who was sworn.

*Hannah Humphreys sworn.*

Counsel.—Pray give us an account what you know of this unhappy affair.

Humphreys.—The young gentlemen were in the dining room, and I was in the next room ; I heard a noise, upon which I went into the dining room and asked them what they did there, and what was the matter they were not in their own rooms ; Mr. Ricketts made answer, that he wanted a piece of cake of Mr. Chetwynd ; I said to Mr. Ricketts, Have not you had a piece? He said, No, and smiled. I looked at Mr. Ricketts and said I believed he had had some, for he had some crumbs of cake upon his lips ; Mr. Ricketts smiled again, and said he wanted another piece, or a bigger piece.

Where was Mr. Chetwynd then?—Mr. Chetwynd at that time was at his own bureau, cutting his cake.

How far was Mr. Ricketts off the bureau?—He was as near as I can guess about two yards from the bureau ; Mr. Ricketts went up to the bureau to Mr. Chetwynd, and Mr. Chetwynd lifts up his arms, and says, Don't, Mr. Ricketts ; and Mr. Ricketts then took the cake.

Court.—Mention in what manner he took it.

Humphreys.—I think to the best of my knowledge it was over Mr. Chetwynd's shoulder.

Counsel.—Where did you stand at that time?

Humphreys.—I stood at the corner of the middle window, and Mr. Ricketts almost faced me, not quite, but was a little sideways of me.

Court.—Had Mr. Ricketts the cake in his hand?

Humphreys.—He had the cake in his hand.

Court.—How far were you off the bureau then ?

Humphreys.—I was then from the bureau about three yards, and Mr. Ricketts came up to me, and said, Hannah, I have got some cake. (I had a stocking in my hand, which I was darning.) Upon Mr. Ricketts saying he had got some cake, Mr. Chetwynd came from his bureau to my right hand, and in a very short time, Mr. Ricketts said, Hannah, Mr. Chetwynd has stabbed me. I looked at him.

Prosecutor's Counsel.—Did you see Mr. Chetwynd come from the bureau ?

Humphreys.—Yes.

Where did Mr. Ricketts stand ?—Mr. Ricketts stood just by me.

Now tell us whether you saw this stab given ?—I did not see it given.

Did you observe that Mr. Ricketts had any thing in his hand ?—He had nothing in his hand but a bit of cake.

Did you observe that Mr. Ricketts had struck Mr. Chetwynd ?—No, he had not struck him, and was not seemingly in any anger.

You say that at this time Mr. Chetwynd came up and stabbed Mr. Ricketts ?

Prisoner's Counsel.—No, that is not right.

Court.—She said Mr. Ricketts told her so.

Prisoner's Counsel.—I do not doubt your candour, but you are mistaken in the evidence ; repeat it again.

Humphreys.—I saw Mr. Ricketts come from the scrutoire, and he said, Mr. Chetwynd has stabbed me. Says I, Mr. Ricketts you joke. Mr. Ricketts had put his hand to his side : I bid him take his hand away, and then I saw a little blood ; Mr. Chetwynd, said I, you have done very ill. Mr. Chetwynd said, Hannah, if I have hurt him, I am sorry for it.

Prosecutor's Counsel.—Did you observe who were in the room ?

Humphreys.—I saw Mr. Hamilton, Mr. Ricketts, and Mr. Chetwynd.

Court.—Did you hear Chetwynd ask Ricketts for his piece of cake ?

Humphreys.—I did not hear him.

Counsel.—What became of Mr. Chetwynd after that ? Where did he go ?

Humphreys.—He went out of the room.

How long did he continue in the house ?—He continued in the house till Tuesday morning.

That was the next morning ; did he give any notice of his going away ?—I cannot tell that.

[Counsel for the prisoner on the cross-examination.]

Counsel.—Tell us where this room was, where you heard the noise before you went to them.

Humphreys.—It was on the same floor.

Did you hear any rustling of feet, or only their tongues ?—It was only their tongues ; it is my customary way when I hear any noise among the young gentlemen to go to them, in order to persuade them to be quiet.

Where was Mr. Chetwynd when you came into the room ?—Mr. Chetwynd was at his bureau, and Mr. Ricketts was standing in the room, and he said he wanted a piece of cake of Mr. Chetwynd.

Was this Mr. Ricketts' room ?—No, Mr. Ricketts had a room up another pair of stairs.

Then he was got into Mr. Chetwynd's, which was the occasion of your asking him what he did there ?—Yes, it was the room where Mr. Chetwynd lay ; he had not a room to himself.

Was there any conversation about the cake, or any asking for cake before you went into the room ?—I do not know, he only said he wanted another piece of Mr. Chetwynd's cake.

Was Mr. Chetwynd's back toward you ?—Yes.

Then consequently it must be to Mr. Ricketts ?—Yes, Mr. Chetwynd put out his arms a little to keep Mr. Ricketts from the cake. It was but a very little way thus, extending his arms a little from his body, and raising them up, and Mr. Chetwynd said, " Don't, Mr. Ricketts."

Did you observe Mr. Ricketts then offer to take the cake, or to touch Mr. Chetwynd ?—I only observed him to take the cake.

But did you see him touch him ?—I did not see him touch him.

That is very odd, because putting out his arm, and saying Don't, shews as if he had done something.—He might touch his clothes when he took away the cake.

Was not he taller than Mr. Chetwynd ?—He was a great deal taller than Mr. Chetwynd ; he might for his height reach over Mr. Chetwynd and take the cake.

Could he take it over his shoulder, or over his head without touching him ?—Over his shoulder he might do it without touching him.

Did he take the cake over his shoulder or over his head ?—I think it was over his shoulder.

Did not Mr. Ricketts laugh when he had got the cake?—Mr. Ricketts came away laughing, and said he had got a bit more cake.

Was there any motion or action between them before this thing happened?—There was not any motion or action at all that I saw before this happened.

Did you stand facing the bureau?—The bureau was behind my back, and Mr. Ricketts stood facing me, as I stood sideways to the window, with my work in my hand, and Mr. Chetwynd was by my right hand; we all three in a manner touched one another.

How could this be done without your seeing it?—I did not see it done.

And then the first thing you heard was, that he was stabbed?—That was what Mr. Ricketts said.

And you at that time did not believe it?—No, I did not believe it; for when Mr. Ricketts said he was stabbed, I lifted my eyes off my work, and said, Mr. Ricketts, you joke.

Was there any blow given?—I believe there was no blow; I did not see any; I did not at first believe that there was a wound.

As you did not believe it, it is plain that Mr. Chetwynd did not believe it; for he said, if I have hurt Mr. Ricketts, I am sorry for it. Did he look to have anger in his countenance?—No; he looked with concern; and said, Hannah, if I have hurt Mr. Ricketts, I am sorry for it.

*Mr. Beeston Long sworn.*

Prosecutor's Counsel.—Pray, Mr. Long, inform the court what discourse passed between you and the deceased after he had received the wound.

Mr. Long.—I came to town on Monday night, the 26th of September, and found a letter from Mr. Clare; wherein he acquainted me, that Mr. Ricketts had met with an untoward accident, and had received a wound from a young gentleman in the house, but that he thought there was then no danger. This letter having been written in the morning, I enquired if there had been any subsequent message from Mr. Clare; I was told there had not: I did not go to Mr. Ricketts that night, not thinking there was any occasion for so doing; but in the morning, I determined to take the advice of Mr. St. Hill, who being a gentleman very eminent in his profession, we always take his opinion when any accident happens to the young gentlemen under our care. I wrote a letter to him, and

desired he would meet me at the academy that day [that was on Tuesday], which he did ; and I found there Mr. Shipton and Mr. Middleton, who had likewise been called in ; these three gentlemen, with Mr. Mac Cullock, the surgeon of the house, viewed Mr. Ricketts's wound, and thought him in very great danger ; they continued attending him till Thursday morning, the 29th, when he died.

What account did Mr. Ricketts give you of the occasion of this accident ?—Mr. Ricketts told me, that on the Monday, about noon, he was sent to call Mr. Chetwynd to fence, and found him in the dining-room with a cake, of which he asked him for a piece, which he gave him ; that he then asked Mr. Chetwynd for another piece, which he refused ; and cut a piece of the cake, and laid it upon his bureau, which stood at the end of the room ; Mr. Ricketts, to tease Mr. Chetwynd, for having refused him (but without any intention of eating or keeping it), took up the piece of cake, carried it to the middle window, and said to a maid, who stood there, Hannah, I have got a piece of cake ; and he said that Mr. Chetwynd followed him, and immediately stabbed him in the stomach.

Prisoner's Counsel.—You said, you came to town that Monday, did you see Mr. Ricketts that day ?

Mr. Long.—I came to town that Monday night, and found a letter from Mr. Clare ; I did not see Mr. Ricketts that day ; for I did not apprehend there was so much danger, as I afterwards found there was.

How many surgeons had you ?—There were four surgeons ; three were called in ; and there was Mr. Mac Cullock, the surgeon of the house.

I should be glad to know, whether Mr. Ricketts gave any account to you of any passage that happened immediately after the taking of the cake ?—He said, that after he had taken a piece of cake, he carried it to the middle window, where the maid stood ; and said, Hannah, I have got a piece of cake ; and that Mr. Chetwynd came up to him, and stabbed him without speaking a word.

Without whose speaking a word ?—Without Mr. Chetwynd's speaking a word.

Did you ask him in what manner he had lived with this young gentleman the prisoner, whether he did not live in friendship ?—he said he never had had any quarrel with him ; and I have reason to think it to be true, because Mr. Ricketts was a lad of a remarkably good-natured disposition.

Did you ask him any thing further ?—Mr. Ricketts was generally, when I saw him, in such torment, that I did not care to trouble him with too many questions.

Did not he tell you he forgave him?—He did say that he forgave him.

Prosecutor's Counsel.—Call Mr. St. Hill.

Prisoner's Counsel.—There is no occasion for it.

Prosecutor's Counsel.—The jury must have satisfaction, that the wound was the occasion of his death.

*Mr. Peter Hill sworn.*

Prosecutor's Counsel.—Pray, Sir, give the Court an account in what condition you found the deceased.

Mr. St. Hill.—On Tuesday the 27th of last month, I received a letter from Messrs. Drake and Long, desiring me to go to Mr. Clare's academy in Soho-square, to see a young gentleman that they had the care of, who the day before had been accidentally wounded: I met there Mr. Shipton, Mr. Middleton, and Mr. Mac Cullock; and by Mr. Mac Cullock's account of the wound, who first dressed him, and the symptoms that attended it, we had too much reason to fear that it had penetrated into the cavity of the stomach, and that some of the viscera were wounded.

Pray, Sir, inform us, whether you think that wound was the occasion of his death? what depth was the wound of?—It is not easy to know the depth of a wound after it has so penetrated: But, upon the whole, I think we have given our opinion in such a manner, that nobody will doubt but that the wound was the occasion of his death.

The counsel in behalf of the prisoner acknowledged the great candour of the gentlemen who were concerned for the prosecution, in their not endeavouring to aggravate the circumstances attending the offence. They confessed the truth of all that had been sworn by the witnesses; but insisted, in behalf of the accused party, that though his hand might have made an unhappy blow, his heart was innocent.

The following was the substance of their arguments:—They said that the fact could not amount to murder at common law, which Lord Coke defines to be “an unlawful killing another man aforethought,” either expressed by the party, or implied by the law. They said, that in this case, there was not the least malice, as the young gentlemen were friends, not only at the time, but to the close of Ricketts' life, when he declared that he forgave the other.

They said, that it being proved that there was a friendship subsisting, it would be talking against the sense of mankind to say that the law could imply anything contrary to what was plainly proved. That deliberation and cruelty of disposition make the essential difference between

manslaughter and murder ; and they quoted several legal authorities in support of this doctrine.

One of their arguments was urged in the following words :—" Shall the young boy at the bar, who was doing a lawful act, be said to be guilty of murder? He was rescuing what was his own : the witnesses have told you, that after he had given Ricketts a piece of cake, Ricketts went to him for more ; he denied to give it him : he had a right to keep his cake, and the other had no right to take it ; and he had a right to retake it."

The counsel for the crown, in reply, submitted it to the court, whether (since the only points insisted on by way of defence for the prisoner were questions at law, in which the jury were to be guided by their opinion), the facts proved and admitted did not clearly, in the first place, amount to murder at common law ; and in the second place, whether there could be the least doubt in point of law, but that the case was within the statute of 1 James I.

Upon the first it was admitted, that to constitute murder there must be malice.

But it was argued, that malice was of two kinds, either expressed in fact, or implied by law.

But when one person kills another without provocation, it is murder, because the law presumes and implies malice from the act done. And therefore, whenever any person kills another it is murder, unless some sufficient provocation appear. But it is not every provocation that extenuates the killing of a man from murder into manslaughter. A slight or trivial provocation is the same as none, and is not allowed in law to be any justification or excuse for the death of another. And therefore no words of reproach or infamy, whatever provoking circumstances they may be attended with ; no affronting gestures, or deriding postures, however insolent or malicious, are allowed to be put in balance with the life of a man, and to extenuate the offence from murder to manslaughter.

For the same reason, no sudden quarrel upon a sudden provocation, shall justify such an act of cruelty as one man's stabbing another, though it be done immediately in the heat of passion. As if two persons, playing at tables, fall out in their game, and the one upon a sudden kills the other with a dagger ; this was held to be murder.

Mr. Baron Reynolds and Mr. Recorder, taking notice of the points of law that had arisen, the learned arguments of the counsel, and the many

cases cited upon this occasion, were of opinion, that it would be proper to have the facts found specially, that they might be put in a way of receiving a more solemn determination.

A special verdict was accordingly agreed on by all parties, and drawn up in the usual manner, viz., by giving a true state of the facts as they appeared in evidence, and concluding thus:—"We find that the deceased was about the age of nineteen, and Mr. Chetwynd about the age of fifteen; and that of this wound the deceased died on the 29th of the said September; but whether upon the whole, the prisoner is guilty of all, or or any of the said indictment, the jurors submit to the judgment of the court."

After this special verdict was found, the relations of the prisoner had a meeting with his counsel, to consult upon what was most proper then to be done. The counsel, considering the youth of the prisoner, and the length of time he might lie in Newgate before the determination of the special verdict, advised an immediate application to His Majesty for a pardon. In consequence a petition was presented to the Lords Justices, King George II. being at the time in Hanover. This petition was referred to the Attorney General, Sir Dudley Ryder, and the Solicitor General, the Hon. William Murray, who reported that there was no objection in law to the extension of the royal mercy to the prisoner. Upon this the King, being returned from Hanover, ordered a pardon to be made out for William Chetwynd. Some further obstacles to the passing of this pardon were raised by the family of the deceased, and the case was re-argued by counsel before the Lord Privy Seal, who seeing no sufficient reasons in the objections to his doing so, put the privy seal to the pardon. It now had to pass the Great Seal; but again the family interfered, and again were the merits of the affair discussed by counsel, who appeared before Lord Chancellor Hardwicke at his house in Ormond Street. His lordship having no doubt on the subject, ordered the great seal to be put to the pardon, which the prisoner came to plead in Westminster Hall in the following Hilary Term. Here also counsel on the part of Ricketts' relatives strongly opposed the plea, but Chief Justice Lee admitted it; and the prisoner having then pleaded the pardon on his knees, was immediately discharged.

The expenses attending this prosecution, from consultations, fees to counsel at the trial, at the Attorney General's, the Lord Privy Seal's, the Lord Chancellor's, and at the Court of King's Bench when the pardon was



pleaded, together with the costs of the imprisonment from October to February, amounted to above £1,300.

William Chetwynd, who thus came safely out of the hands of justice, succeeded to the best part of the family estates upon the death of his elder brother, Walter Chetwynd, Esq., who, oddly enough, caught a fever, which caused his death, from attending a trial at the Old Bailey, in 1749. Mr. William Chetwynd, himself, died in a few years afterwards, being the last heir male of the Chetwynds of Grendon.

## THE TRIAL OF GEORGE ROBERT FITZGERALD.

GEORGE ROBERT FITZGERALD, commonly called "Fighting Fitzgerald," was a person very notorious in the fashionable circles of Dublin and London some seventy or eighty years ago. His bullying and duelling propensities made him the terror and pest of society. In the course of his life, he was engaged in upwards of twenty personal rencontres, and wounded or slew no less than eighteen of his antagonists, with no other injury to himself, than upon one occasion a severe wound in the head. This gave rise to a suspicion of foul-play, and he was at last detected at a duel wearing armour under his clothes, and was driven disgracefully off the field. Having in consequence become too infamous to be further noticed by persons of respectability, he retired to his seat in Ireland, and there leagued himself with a gang of gamblers and other desperate characters : he was eventually led to commit the extraordinary crime which forms the subject of this trial.

By birth, education, and position, "Fighting Fitzgerald" had full claims to the rank of a gentleman. He was the eldest son of George Fitzgerald, Esq., of Turlough, in the county of Mayo, Ireland, a military officer in the service of Austria, by his wife, the Lady Mary Hervey, daughter of John Lord Hervey, and sister of Frederick, fourth Earl of Bristol, Bishop of Derry. His ancestors, the Fitzgeralds of Gurteen's, co. Waterford, were an influential branch of the proud house of Fitzgerald, deriving in direct descent from the Desmond line of that distinguished family, and he himself married Miss Conolly, sister of the Right Hon. Thomas Conolly, of Castletown, and cousin to the Duke of Leinster ; with this lady he received a dowry of ten thousand pounds, a fair fortune for the period, while his father settled upon him an income of one thousand pounds per annum. Fitzgerald was brought up at Eton, finishing his

studies at the University of Dublin : for some time he held a commission in a Cavalry regiment, where he rose to the rank of Captain.

The trial of this unfortunate man who sacrificed every advantage of life to his own perverse conduct, commenced at the assizes held at Castlebar, Mayo, in April, 1786. The judge who presided on the occasion was a remarkable man, Barry Yelverton, then Lord Chief Baron in Ireland, and afterwards first Viscount Avonmore. His career formed a strong contrast to the wretched prisoner before him : he had, with far less opportunities, risen, through his own industry and ability, to hold a high place among the most eloquent and the most esteemed of Ireland's lawyers and statesmen. He was grandfather of the present Lord Avonmore. The other judge present at Fitzgerald's trial was Mr. Baron Power.

Fitzgerald was charged, together with Timothy Brecknock, John Fulton, Andrew Creagh, or Craig, and others, with the procurement of the murder (under an old Irish statute which made that treason), and the actual murder of Patrick Randal McDonnell, Esq., of Chancery Hall, Mayo (a gentleman with whom Fitzgerald had a feud), and of Charles Hipson, a shoemaker, who lost his life on the same occasion.

Prior to the trial, a singular affair had taken place, which nearly proved fatal to the prisoner Fitzgerald. His crime had caused the greatest excitement against him in the county, and a party of the deceased Mr. McDonnell's friends, broke into the gaol at Castlebar, where he was confined, and wounded him so severely, that at the period of the assizes, it was shewn that Fitzgerald was unable to take his trial. The judges consequently adjourned their court, and the investigation of his case to the following July, when they came down from Dublin to continue the trial, or rather trials, for the proceedings commenced with five persons being tried for the above assault on George Robert Fitzgerald. The parties charged set up an *alibi*, and were acquitted, though the facts, whether committed by them or by others, were no doubt true. Fitzgerald himself was the principal witness against them, and as what he said forms a part of this strange narrative, it may not be inappropriate to give his evidence here, as well as that of Mr. Clarke, the sub-sheriff.

*George Robert Fitzgerald, Esq, examined by Mr. O'Hara.*

Previous to his examination, he said that it was extremely disagreeable to him, to give evidence at all. He had, however, rather state the facts himself, than follow the examination of counsel.

Mr. O'Hara observed, that in examining him he should follow the order which appeared in his own information ; he also warned him not to state any thing which related to Andrew Gallagher, who was not then upon his trial. Mr. Fitzgerald then said, that as to Andrew Gallagher he had but one thing to say, and that was to his credit.

He then proceeded to give his testimony, which was, that on the 21st of February last, his house was broke open, and some time afterwards, he was told that he was arrested, he was taken by a great number, a mob. He requested to be put in the hands of the Sheriff, and he was so. Mr. John Gallagher, the prisoner at the bar, was one of the mob who had taken him. The taking was accompanied with circumstances of great violence ; his house was broken open, and several shots were fired. He was put into the gaol on the 21st of February. When he was put into the gaol, he was taken into the room which is called the Marshalsea. There were two sentinels put upon him, as a guard. The corporal desired them to load, and fire on any person who might break in. He was told afterwards, dinner was ready for him below stairs ; he could not exactly say when he was told so, nor did he exactly recollect who called him to dinner. He did not go down directly, because the sentinel would not permit him, until the corporal came and relieved the guard. So soon as he was permitted, he went down. The doors of the room where he had been at dinner were broken in ; there was a previous circumstance thereto. Some time after he came down, the Sub-sheriff came in. He informed the witness that the gaoler had been just then changed ; that he had business to go up into the Marshalsea, and must take one of the sentinels with him. He, without consulting the corporal, took one of the sentinels up stairs and left one. Soon after, a number of people forced open the door, it was not long after, it was while the Sub-sheriff was above stairs. The door was shut when they forced it open, and he believes the persons who broke open the door entered. [Here the witness looked at the bar.] He saw four of them at the bar, one of them commonly goes by the name of Doctor Martin. He was told his name was James, but does not know. Another of them, Mr. Charles Higgins, he believes lives at Westport. Another of them was Mr. John Gallagher, and the other Mr. Luke Higgins. He was not certain whether they were the persons who forced the door of the gaol, but they came in. He would not take upon him to say whether Daniel Clarke was there ; a good many others entered besides the persons at the bar, they were armed ; he recollected

some of the arms, they were pistols and sword canes, and afterwards a firelock. Doctor Martin had a pistol and a sword cane, but till the pistols were fired the sword canes were not made use of. There were a great many had sword canes. Mr. John Gallagher had a pistol, but the witness did not perceive that he had any sword cane. He could not tell who first assaulted him, or the manner of the assault. John Gallagher collared him, and several pistols were fired at him. The others had pistols. He could not say how many fired at him ; there were marks of shots in the wall, and it appeared that there were five marks, one of which was charged with swan shot and a ball. There was a ball in his thigh which was not yet extracted. While John Gallagher collared him there was a sixth shot fired at his head, which he perceived—he put up his hand to change the direction, and it broke the ring on his finger. The party began to thrust at him. He struggled with John Gallagher, and got loose from him. So soon as they had fired at him, they thrust at him with sword canes—one he particularly was certain thrust at him, it was Doctor Martin—the thrust was in a very particular manner, which he would mention. As he made the thrust, the witness got the middle finger of his right hand round the sword, in order to direct it from his body, and it ran up into his arm and there broke. It was impossible for him to say how many wounds he got then, or before, or after he got loose from John Gallagher—but he got a great many. One circumstance he recollected of Doctor Martin—he was poking at him from behind, and finding that the point did not enter the witness's coat, he shortened his grip, and tried to bore it through his coat without effect. After he got free from Gallagher they still continued poking at him. There were one or two lights in the room, he was not positive which—they were extinguished at last—it was impossible for him to tell by whom, but he recollects that the candle was given to a boy to hold by one of the party, and that the man who gave it to him struck the witness with the candlestick. [Here the witness shewed the mark of a wound on his head.] When the candle was put out, they seemed in a great hurry to get out. The stroke of the candlestick was not the last injury he received. The firelock had been before taken from the sentinel during the attack, whether forced from him or not he did not know, but he knew that the sentinel gave him no assistance. One of the party stood at the door with the firelock ; he afterwards held it by the extremity and struck the witness, with the butt end of it on the head until he struck him under the table—they continued beating at

him with the butt end of their pistols and the musket for some time ; almost all the sword canes had been broken ; every one of the party struck him ; he could not tell how many wounds he had received. When they had struck him under the table, he begged of them to desist for they had done what they wanted ; they had done his business, for he supposed their purpose was to dispatch him ; on which, John Gallagher swore a violent oath, that he believed his business was done, but if it was not they would return on the morrow and hang him, and he, Gallagher, would dance on his (the witness's) shoulders. In their striking of him he put up his hands to save his head, and received several strokes on his hand, and one of the bones of one of his fingers in the back part of his hand was broken, so as that he had lost the use of it.

*He was cross examined by Mr. Blossett.*

A few days after the affray, a magistrate had been with him. It was Mr. John Browne, one of the jury. He asked some questions, but not positive what they were. He was not sure whether he had sworn any information ; but he rather inclined to think he had ; Does not recollect whether he had the informations ready written, or whether Mr. Browne took them down ; he was not in a situation to have a perfect recollection, Mr. Browne would best recollect ; he could not recollect any part of the information, but he knew that the name of Clarke was mentioned. He recollected swearing other informations before another magistrate ; but before whom he did not recollect ; he could not say at what distance of time he had sworn them, but it was at a considerable time after. He could not recollect any firelock but the one in the sentinel's hand, from the crowd about him. He was in that situation to be incapable of observing whether the sentinel returned or not. There was not one shot fired before the party rushed in, as he recollects ; he was told that one shot was fired by the sentinel above stairs, to alarm the garrison and the town, he could not tell whether to believe that report or not ; he heard it from persons, of whom he could not tell, whether they were indifferent to the event or not ; circumstances might alter men's dispositions. He was obliged to Mr. Blossett for putting him in mind of one circumstance, there was a bayonet on the end of the musket, and he felt the effect of it ; one of his teeth was struck out by a stroke from it, another of them was broken, and he believed its being broken hindered the bayonet from going down his throat ; he could not tell whether it was discharged or not.

he believed it was. It would have been fortunate for him if the candle had been put out sooner, for they might have hurt themselves ; he could not ascertain the number who had come into the room, but it was crowded near where he stood ; the party was in motion about him, and very active, he could not say whether several persons during the affray passed between him and the candle ; they did not come into the prison to hurt each other, they came there to hurt him ; he dared to say, they did not come to hurt each other, for if they had that intention they could find each other out of doors. John Gallagher held him ; He ran no hazard by doing so unless in the confusion. The witness had been robbed before he got into prison of his shoe buckles ; he had nothing of value about him but two guineas, which happened to be in his fob ; he had no watch or ring but that which was broken ; he recollects being robbed when he was taken at Turlough ; the two guineas in his fob were safe. When he was robbed at Turlough his purse might have contained more than twenty-five guineas, but he had no purse in the prison, nor any watch.

*Second Witness, Mr Patrick Clarke, examined by Mr. Paterson.*

He is Sub-sheriff of the county of Mayo ; he was in his gaol on the night of the 21st of February about eleven o'clock ; he recollected that some persons had forced into the gaol, and had committed violence first upon himself, and afterwards on Mr. Fitzgerald ; the witness found Mr. Fitzgerald, when he went into his apartment, wounded and very ill treated ; he could not take upon him to name any of the persons who broke in ; he did not know any of the prisoners to be any part of the party ; he was pulled down ; he made a violent outcry and called out murder ; he was assisted by Mr. Ellison, who brought a guard ; he was coming out of Mr. Fitzgerald's apartment when he was seized ; the candle was instantly put out ; one of the shots he believed, was fired at himself ; it was impossible for him to tell who had fired the shot ; it was fired at some distance and in the dark.

*He was cross examined by Mr. Browne.*

He saw Charles Higgins upon that night ; he had taken him with him to the gaol, as a friend and witness to his indenting the new gaoler. Charles Higgins was with him when he was attacked : he, Higgins, had no weapon, and he believed that he could have no weapon without the witness's knowledge.

The Court here took up the witness. He for some time did not know

what became of Charles Higgins ; indeed for some time he did not know what became of himself ; he supposes he made the best of his escape.

Here the Court examined Mr. Fitzgerald again : he recollected that Clarke, the Sub-sheriff, and Charles Higgins were in his room that night previous to the outrage.

After this trial was over, George Robert Fitzgerald not joining in his challenges of the jury with the other prisoners, was put singly to the bar, and his own trial commenced.

Mr. St. George Daly opened the indictment : the Attorney-General (the celebrated John Fitzgibbon, afterwards Lord Chancellor and Earl of Clare,) stated the case.

The first witness called upon was Mr. Andrew Gallagher, who deposed as follows :

Mr. Gallagher, do you remember the 20th of February ?—I do, sir ; I have a very just right.

Pray, sir, did you know Mr. Patrick Randal M'Donnell ?—I did, sir.

Is he living or dead ?—He is dead, sir.

Will you please to relate to the court and the jury, from your own knowledge, how he came by his death ; and keep your recital as distinct from Hipson as you can, as the present indictment only concerns Mr. M'Donnell ?—I will, sir. Mr. M'Donnell, the deceased, and Mr. Fitzgerald, the prisoner at the bar, lived near each other ; they had frequent bickerings and disagreements ; in consequence whereof Mr. Fitzgerald made many attempts to be revenged on Mr. M'Donnell, for some supposed offence. Mr. M'Donnell, about eighteen months ago, was fired at from a window in Mr. Fitzgerald's house, which shot took place, and wounded Mr. M'Donnell in the leg ; for this assault a man was indicted the assizes following at Castlebar, and acquitted ; in consequence of which, Mr. Fitzgerald levelled his resentment not only against Mr. M'Donnell, but also against Mr. Charles Hipson, who was murdered at the same time with Mr. M'Donnell, and against me ; I suppose for our using our utmost endeavours to bring to justice the person who fired at Mr. M'Donnell, the deceased. On the 20th of February last, Mr. M'Donnell called upon me in the morning, in company with Mr. Hipson, and requested I would go with them to Mr. M'Donnell's house, as he, Mr. M'Donnell, wished to give some necessary directions to his servants, then at his house in the country ; for Mr. M'Donnell declared to me he could not live in his house



at Chancery-hall, in the county of Mayo, being in the neighbourhood of Mr. Fitzgerald, whom he represented as a blood-thirsty, unforgiving man ; and accordingly took lodgings in the town of Castlebar to avoid him. We rode off together, and, as we afterwards heard, about ten o'clock, Mr. Fitzgerald getting information of our being there, sent out a party to apprehend us on a warrant, surreptitiously obtained from a Mr. Alexander O'Malley (whom I since understand has been degraded from his commission) for a supposed assault. On our receiving information that our enemy was in pursuit of us, we rode off from Mr. M'Donnell's, Chancery-hall, but finding ourselves pursued, we stopped at a house on the road ; and I, knowing the resentment was principally levelled at Mr. M'Donnell, persuaded him to conceal himself under some malt, which he did : and in a short time Mr. Fitzgerald's party came up to the house, and after firing several shots in at us, I went out, and demanded the reason that they behaved with such outrage and violence ? John Fulton and Craig replied, they had warrants against Mr. M'Donnell, Mr. Hipson, and myself, but vehemently demanded Mr. M'Donnell. I informed them that he had rode off, and demanded to see their warrants ; which they refused, but burst into the house, and after searching the house and out-houses, they found Mr. M'Donnell, and dragged him out ; they then tied and brought us bound to Mr. Fitzgerald's, at Rockfield, Turlough ; when we arrived there, we alleged that the crime we were accused of was at any rate bailable, and demanded to be brought before a magistrate, which was refused, and we were kept at Mr. Fitzgerald's house that night, they pretending it was too late then to bring us before a magistrate. We remained there that night, and were treated with the greatest indignity and insult. In carrying us prisoners to Mr. Fitzgerald's, they suffered Mr. M'Donnell to ride, on account of the wound in his leg, but tied Mr. Hipson and me together. On the morning of the 21st of February, we were brought out from Mr. Fitzgerald's under a guard, which stood ready to receive us ; and I heard Mr. Fitzgerald, the prisoner at the bar, tell Andrew Craig, who is commonly called Scotch Andrew, " to be sure to secure his prisoners ; and if there was a rescue, to shoot them." We were then led about two or three hundred yards from the house, when Andrew Craig called out, " A rescue ! a rescue !" on which a shot was immediately fired from the rear, which killed one of Mr. Fitzgerald's guard, and wounded three or four more ; the fire then soon became general, and Mr. M'Donnell received a wound in the arm, and Mr. Hipson and I received wounds, when we both fell,

and I endeavoured to crawl into some fern that was near me, and to conceal myself. Mr. M'Donnell's horse took fright after the rider had been shot in the arm, and carried him a few yards on; when just at a bridge, he was seized by a person fixed there for the purpose, as there were guards fixed at all the passes, and Andrew Craig fired at him, and shot him through the body, on which he fell, and if any life remained in him, it was beat out by the butt end of a pistol, and the butt end of muskets: they then fired at and killed Hipson, and coming up to where I was, they were going to shoot me, when one of them exclaimed, "We have no orders to kill him!" which saved my life. I was retaken to Fitzgerald's house, where I was afterwards rescued by my friends.

Do you see any persons now in court whom you can positively swear were present at this outrage?—I can positively swear that Mr. Fitzgerald was present at our setting out, and that I heard him give the directions I have mentioned to Andrew Craig; and that he had a blunderbuss slung under his arm.

*Cross-examined.*

Was Mr. Fitzgerald present when you were first apprehended under the warrant of Mr. O'Malley?—He was not that I saw; I did not see him till I was brought to his house.

Did you see him fire at Mr. M'Donnell, Mr. Hipson, or you?—No; I only saw him give the directions to Andrew Craig that I have mentioned.

The second witness for the prosecution, W. Kelly, examined by Mr. Patterson.—The witness lived in February last in Turlough, the estate of George Robert Fitzgerald. James Foy came to him on the 20th of February last, and delivered a message to the witness, that Mr. Fitzgerald wanted a word with him. He went to Turlough, and saw Mr. Fitzgerald. He saw him in his own parlour; there were ten or twelve people with him. There were fire-arms, guns, and blunderbusses in the room with him. Mr. Fitzgerald told the witness that he had a warrant for Patrick Randal M'Donnell, Charles Hipson, and the two Gallaghers. He desired them to go Mr. M'Donnell's house, and take them prisoners, and if they saw them in the house to break it open, for the warrants allowed it; and if they made their escape or fled, to be sure to shoot them. Before they set out each man got a glass of spirits in the parlour. They left Mr. Fitzgerald in the house of Turlough. He saw Mr. Fitzgerald next

in Ballyvarra. Before he reached Ballyvarra he heard many shots. Mr. M'Donnell, Charles Hipson, and Andrew Gallagher were in custody of Mr. Fitzgerald's men when the witness came up. They were tied by Mr. Fitzgerald's directions ; Hipson and Gallagher were tied, and at first Mr. M'Donnell ; but he was afterwards loosed and put on his horse. Mr. Fitzgerald did nothing, but said he was *fond* that he had them in custody. He cannot tell what time they came into Turlough ; they were there all night ; they were sent away between seven and eight in the morning ; he was a stranger in the place, and did not know many of them. John Fulton, William Fulton, Andrew Craig, and David Simpson were of the guard. Andrew Craig told him he (the witness) was to be put in the front of the guard, and bid him not to look behind, or regard what passed, but go straightforward. Before they set out, they received directions to go to Mr. Bollingbroke's ; and Mr. Fitzgerald told them, that if any operation or rescue happened, to shoot the prisoners. At about a quarter of a mile from Mr. Fitzgerald's, a man next to him, one M'Connell, said he heard a shot or two, and the witness heard Craig cry a rescue. The witness heard two shots more. He turned about, and saw Craig and Fulton fire, and saw Gallagher and Hipson fall, and James M'Connell fell also ! He saw M'Donnell coming by him on the left-hand side of the road, crying Murder ! save my life ! and Craig cried he would have his life. He saw M'Donnell stopped by a man with a hatchet ; and saw Craig pursue him. A young man had hold of the mare, and Knox's boy brought him (M'Donnell) a drink of water in a noggin, and then went into Knox's house to get him assistance. Craig then came up, and presented his piece at M'Donnell, and the witness cried " Murder ! Andrew, don't hurt the gentleman more." Craig then swore he would drive the contents through his soul, and fired the contents at him. M'Donnell did not live fifteen minutes. Craig said, " Long he has deserved that." The arm that was next to Andrew was not broken before the shot. After the shot it appeared to be broken. There was no man on the road but their own party.

*He was cross-examined by Mr. Burke.*

He thought he was going to do a legal act ; he went innocently. One Hogan took him prisoner. He thought it was better for him to turn, than to let innocent people suffer. He did not swear to save his life. Nobody had ever told him that unless he told the truth, he would be

hanged. He never remembers to have said to Moran, the gaoler, that Mr. Fitzgerald was a good master.

To a question put by one of the jurors, he said—

That Mr. M'Donnell's arm, when he saw him at the bridge of Kilnaccarra, did not appear to be broken before Craig shot at him.

*Third witness for the prosecution, Andrew Craig, the approver, examined by Mr. Attorney-General.*

He lived on the 20th of February with Mr. Fitzgerald. He was sent by Mr. Fitzgerald, on the day before M'Donnell was shot last, to collect some men, the tenants. He (Mr. Fitzgerald) wanted them to take M'Donnell, Andrew Gallagher, and Charles Hipson. He did collect them; and Mr. Fitzgerald's steward gave them some whiskey. Mr. Fitzgerald desired them to take them—M'Donnell, Gallagher, and Hipson—at the peril of their lives, let the consequence be what it would. Mr. Fitzgerald called to the witness and spoke to him. He desired the witness to tell Fulton and M'Mullen to shoot the prisoners in the taking, and when they were shot to bring in all their arms, and not to break the house, for it would be a good house for a minister; *not to make a botched job of it, as it had often been before*, for he (Fitzgerald himself) would go and shoot him (M'Donnell) through the centre of the heart, but that he must stand clear to save Fulton and M'Mullen. They went to M'Donnell's and found he had been there. There were two common men in the house. They took seven or eight guns from it and went to the bridge, from whence they saw M'Donnell, Andrew Gallagher, and Hipson on a hill. The men were for going down to take them. The witness bid them come back. Some of the party asked him if he had natural feeling, or was he a coward? The witness sent a messenger to Mr. Fitzgerald, and told him he would go to Breafy. Mr. Fitzgerald was not at Turlough. The witness understood that Mr. Fitzgerald was gone another way in search of them. The witness went home to get a horse. He received a message that M'Donnell and his party were pinned at Ballyvarra. He set off and found them; and Foy said, Now we are joined, whoever has a mind not to assist, let him lay down his arms. Seven or eight shots were then fired at the house of Ballyvarra. Mr. Fitzgerald was about 200 yards off, in a hollow, in disguise, in a common man's coat. There was nobody with him but Scot. After the shots a message came up from Mr. Fitzgerald, to know what they were doing. The constable and others

then broke the doors open, went in and took M'Donnell, Gallagher, and Hipson. M'Donnell asked to be brought before a justice. M'Donnell was not tied; he rode upon his own mare. Before they went to the house at Turlough, Mr. Fitzgerald took the witness aside, and said, they had better take them to Mr. Bollingbroke's and shoot them by the way; that it was a very bad managed job that they had not been shot in the taking. The witness said it might be better managed by taking them to Turlough; and Mr. Fitzgerald consented. The witness begged as a favour to himself to be permitted to turn Gallagher away. Mr. Fitzgerald parted from them when they came to the house at Turlough. John Chawner sent for the witness, and desired him to call for his master. They met in the garden at Turlough with Chawner. Mr. Fitzgerald mentioned to the witness to send the prisoners out upon sight, that is, that minute, that Chawner might shoot them. The witness was desired to look for Chawner's former gun. He searched for and found it; and Chawner loaded it with a brace of bullets. It was agreed to send them out directly. Chawner was to shoot M'Donnell; Fulton and Mullen to shoot the other two. When the witness was almost leaving them he spoke for saving Gallagher. Chawner agreed, and mentioned it two or three times, to which Mr. Fitzgerald answered, No, shoot the covey; the covey! Dead dogs tell no tales! Chawner was in the hay-yard waiting for them to come out. Chawner proposed to shoot them up stairs; and to pretend they had attempted to escape. At twelve o'clock at night he wanted to have the prisoners sent out, that he might shoot them. The witness went into the room where the prisoners were, and having turned out the guard, desired Gallagher, M'Donnell, and Hipson, let what would happen, to keep silent. M'Donnell thanked him; and the witness said, a shut mouth makes a wise ——, and he pointed with his finger to his head. In the morning the witness called up Mr. Fitzgerald, who bid him select twenty of the most active men amongst the tenants. He did so, and brought them to the hall, where spirits of whiskey were given to them. Mr. Fitzgerald told him the affair was managed badly that they were not let to go last night; the country would be up in arms, and his men would be shot; but he had found a plan to have the prisoners shot like dogs. His plan was, first to charge a gun with two fingers and a-half of powder, and seven fingers of small snipe shot; and then to send a man on with that, who should fire from the wall of the park, with directions to fire at and spare none. It would smarten them up to business; the

party would think it a rescue, and the small shot would not damage them. Mr. Fitzgerald called in the witness ; and Mr. Brecknock brought in a law book. Mr. Brecknock pointed out a place in the book, and said that was what he (Mr. Fitzgerald) wanted. Mr. Fitzgerald looked at the book, and said, or read in the book, that they were indicted for felony, and if any attempt was made to rescue them, it was lawful to shoot them. Mr. Fitzgerald desired him to go and move up the guard further, and deliver these directions to them, which the witness did. Mr. Fitzgerald desired the witness to go to Fulton and tell him to shoot M'Donnell ; and Mullen to shoot Hipson ; and he would send Foy to shoot Gallagher. The witness answered, that if Foy went, he would not go ; and said, that he (the witness) would get a man to shoot Andrew Gallagher. Shortly after the witness asked Chambers, Would he kill a man for him ? Chambers answered, He would not for his master's estate. The witness said the charge in the piece, he would give him, would not kill a rat. The witness then drew it to shew him, and Chambers consented to go to Fulton and Mullen. As they went he desired Chambers not to tell them, but he had a good charge. At the hall door Mr. Fitzgerald desired them not to make a botched piece of work of it, as was often done before, for Mr. M'Donnell and he could not live in the country together ; and if M'Donnell was not shot he would take his mare and quit the country. Mr. Fitzgerald desired the witness to go up and tie the prisoners. The witness said he would not ; he never tied any man. None were tied but sheep-stealers and robbers. Hipson and Gallagher were tied together, and M'Donnell rode on his mare ; Murphy led him, and John Fulton, John Mullen, David Simpson, Kelly, Dornin, John Fohender, himself, and Murphy, were of the guard. Foy was sent after him when he was about two hundred yards from the house, with a message, that the witness had before talked of saving Andrew Gallagher ; that he might as well let the whole escape—that no such motion should be made. The witness called to the guard to shorten their step, but they did not mind him. A shot was fired about two or three hundred yards from the deer-park-gate, by one of Mr. Fitzgerald's party. One Nelly, or Lelly, a clerk, who had drawn leases for Mr. Fitzgerald fired that shot. That was the shot which was to smarten the party up to business. The witness got directions before, when that shot was fired, to cry out a rescue, and he did so. Hipson was shot by Mullen. Chambers fired. One of the men of their own party had a spleen

against another, and, as the witness supposes, took an opportunity and killed their own man. The witness saw M'Donnell's mare rearing in Murphy's hand ; his breast towards them. Three of the party fired at him ;—believes Fulton to be one of them ; the shot took effect, for the witness saw one of his (M'Donnell's) arms flinging as if broke. M'Donnell fled towards Killnacarra. The witness does not know whether he (M'Donnell) was stopped or not. The witness went to a shoemaker's house, and borrowed the shoemaker's mare, and pursued M'Donnell. The witness overtook him. Fired at him. He was shot dead. The party left Gallagher behind. Some others of the party took Gallagher home to Turlough. Gallagher had got home before the witness. The witness met a man who had M'Donnell's mare, whom he sent to know what was to be done with the dead bodies. The witness saw Mr. Fitzgerald, who said, they had made a bad job to leave Andrew Gallagher alive to hang them all ; that must not be. Gallagher should be sent to a justice and shot on the road ; the witness said he would not do it, they should kill him first. He (Gallagher) had made a penetrating speech, and if Mr. Fitzgerald did not pity him, to pity his wife and children, for his children would be fatherless and his wife a widow. The witness at length settled with his master to send Gallagher to Huston's. The witness's reason for saving Gallagher was his friendship for him. Gallagher had inoculated his children, and given them medicines. The witness knew of other attempts made upon Mr. M'Donnell by Mr. Fitzgerald, one in particular immediately previous to the last assizes.

Mr. Burke objected to giving evidence of this kind, as Mr. Fitzgerald had been already indicted, tried for and acquitted for that offence.

The Court over-ruled the objection, declaring that a witness had a right to give evidence of every thing that shewed malice in Mr. Fitzgerald.

Andrew Craig.—The first attempt he knew of Mr. Fitzgerald, upon M'Donnell was shortly before the last assizes, on the day that M'Donnell passed by the pound, and had a conversation with Mr. Fitzgerald. Shortly after Mr. Fitzgerald desired the witness to charge a musket with slugs, for he, Mr. Fitzgerald, wanted it to shoot otters ; the witness did so and then went to shoot magpies. When he returned he was asked by Mr. Fitzgerald if M'Donnell had gone by. He told Mr. Fitzgerald he believed not. The witness then went into the scullery and drew the charge out of the musket he had loaded for Mr. Fitzgerald, and put in a



little turf, and chewed paper instead of the balls. He went home to his own house in the evening, and found one of his children burnt. He returned to Mr. Fitzgerald's to get some white lead and oil, to put to his child, and went to the hay-loft for that purpose. He heard the two M'Donnells ride by, talking of peace and quietness. He saw a man from the corner of the house shoot at M'Donnell; and he saw that man return to Mr. Fitzgerald, and heard Mr. Fitzgerald say to him, "Good night, my faithful friend Foy." When the witness came from the stables, Mr. Fitzgerald asked him what he had been doing? the witness said he had come lest any thing was amiss amongst the horses. Mr. Fitzgerald asked him if he had heard a shot. The witness said not. When he came the next morning to Turlough, he was asked by Mr. Fitzgerald if he had heard any news. The witness said he had heard very bad news; that M'Donnell was shot passing by the road three inches in his head. Mr. Fitzgerald said, damn the drunken scoundrel, he had been hurt by some of his own party. Mr. Fitzgerald wanted the witness to swear that M'Donnell had fired the first shot. The witness refused it, saying no, let the man who fired it swear. A ball happened to be found on the road, which was preserved, and some holes on the house shewn as marks of shooting. The next attempt he knew upon M'Donnell was, he and Fulton were directed to go to Chancery Hall. They were there nine or ten times in order to shoot at M'Donnell; one night that they went there three windows were open, and Fulton said, "Bad luck to you who left the windows open if you knew what we were about." Another night Fulton seemed very dull, he said his father had lost every thing by coming into that country, and if he (Fulton) did not shoot M'Donnell, Mr. Fitzgerald would turn them off, but the witness would rather lose every thing than shoot at a man. The witness told him there was a way to settle all that, which was to fire in at the windows when nobody was in the room, and it would be talked of as an attempt upon M'Donnell. Fulton did so and the witness rode off and told Mr. Fitzgerald that there was bad news, that Fulton had fired into Mr. M'Donnell's house, and the witness was afraid he was taken. Mr. Fitzgerald seemed rather to bemoan the loss of a gun and case of pistols, that Fulton had with him than Fulton's being taken. He knew of another attempt on Mr. M'Donnell. He (Fitzgerald) ordered him to go to Keelogue and shoot M'Donnell out of a brogue-maker's house. On another occasion he had directed Mullen and Fulton to shoot M'Donnell. At one time when the witness objected to doing this kind



of business, saying that he was a man who had a family, that he had a good character, and the affair would come to light, Mr. Fitzgerald said since he was so delicate, to send Murphy to him, that he might send him to Capperary House where John Chawner was to bring M'Donnell. Chawner lived with M'Donnell as a sportsman. Chawner had formerly lived with Mr. Fitzgerald.

*He was cross-examined by Mr. Owen.*

It was since he came to gaol that he resolved to give evidence. He had made his escape. He was taken near Dublin. He could not tell how long since. Nobody prevailed with him to make his confession. He could not tell why he did not make it before he was taken. There was no message ever sent to him about it. He never had any conversation with the Attorney General. Never saw him but at the last assizes, and at Mr. Conolly's once hunting. No person ever spoke to him about confessing. Mr. Fitzgerald told him he had warrants. Brecknock pointed out the place in a law book. Mr. Fitzgerald said it was an act of parliament, and that it was lawful to shoot people when indicted for felony. The witness did not know whether they had a warrant or not. Mr. Fitzgerald appointed a place to shoot M'Donnell and the other prisoners when the rescue shot, as he, Mr. Fitzgerald, called it, should be fired. The witness could have killed Gallagher himself, but he wished to keep his hands clean. When upon other occasions he has had scruples, Mr. Fitzgerald had repeatedly told him, that he ought to obey his (Mr. Fitzgerald), master's orders, and that no judge or jury would or could find him guilty for so doing. The witness had hopes of being saved on account of his evidence.

Here closed, with some other formal evidence, the case on the part of the crown ; and on Mr. Fitzgerald being called upon, and told, then was the time to make his defence, he replied, he would leave everything to his counsel employed for him.

His leading counsel, Mr. Stanley, then mentioned, that they would call a number of witnesses to prove an *alibi* on the part of Mr. Fitzgerald.

Several witnesses were then called on the part of Mr. Fitzgerald, and all tended to the same *alibi*, of his not being present *the time* the actual murders were committed ; but proved nothing as to the directions and preconcerted schemes laid for the destruction of Mr. M'Donnell.

The Lord Chief Baron Yelverton then proceeded to charge the jury to

the following purport:—That the prisoner, George Robert Fitzgerald stood indicted with another, for having of his malice prepensed, wilfully and traitorously provoked, stirred up, and procured Andrew Craig and others to slay and murder one Patrick Randal M'Donnell, in the very words of the statute of the 10th of Henry VII., and the indictment proceeded to aver, that a murder was actually committed on the said Patrick Randal M'Donnell, by means of the provocation, stirring up, and procurement of the said George Robert Fitzgerald.

There was also another indictment against him of a similar nature, for the provocation, stirring up, and procurement of the murder of Charles Hipson.

The whole was but one transaction, and the evidence went to both the indictments. A great part of what had been stated in evidence on the table had been merely introductory; a great part of it was not material, and drawn forth, not by the examination of counsel, but from the eagerness of the witnesses. He would endeavour to select such parts of it as appeared to him applicable to the case before the jury, and was happy to find that some of them had themselves taken notes.

The Chief Baron then went through the material parts of the evidence except that given by Anthony Craig, which he did not recapitulate, but said he would leave entirely to the jury subject to this observation, that being indicted for the same offence himself, and a principal actor in it, he had sworn with a halter about his neck, and therefore his evidence ought not lightly to be received, but weighed in the scales of probability, even to a scruple, and no further believed than as the evidence of other witnesses, where they swore to the same facts, confirmed it, or where he was the single witness, rendered it probable. He said that to convict the prisoner of the offence laid in the indictment, it was necessary first to prove that a murder was committed by persons named in the indictment, or some of them; next, that they acted by the procurement of the prisoner. That it was proved that two homicides were committed, and committed by some of the persons charged on the indictment with that fact; for all those who were named by the witnesses to have been in the guard, when that fact was committed, were part of the fifteen or sixteen charged in the indictment. But whether these homicides amounted to murder would depend partly on evidence, and partly on matter of law; that if they believed the evidence for the crown, the persons who composed the guard had directions to shoot and make sure of their prisoners,

if there was even the colour of a rescue ; that there was in truth no rescue or attempt at rescue, but merely a shot fired by one of their own body to give the appearance of a rescue, and that thereupon Hipson, though bound with cords and unable to resist or escape, was shot dead upon the spot, and M'Donnell shot in the arm, and when lying on the bridge helpless and unresisting, dispatched. The prisoner indeed attempted to justify these homicides, by proving an endeavour to rescue by some friends of the deceased. What credit John Love, who gave an account of this transaction, to which he was the single witness, deserved, he must leave to the jury. But supposing, according to the evidence of that witness, that twelve men had actually come and fired upon the guard, were they therefore to kill their prisoners ? Certainly not. They might perhaps be justifiable in killing the assailants, but not in killing their prisoners, who neither joined in the rescue nor made the least attempt to rescue. He conceived, that to kill prisoners charged with a misdemeanor, or arrested by civil process in case of flight of rescue, would be murder or manslaughter, according to the circumstances ; and that the killing a prisoner, even under a charge of felony, could not be justified, but where his own flight or resistance was attended with circumstances which shewed that he could not be otherwise overtaken or secured. The killing should not appear to be a wanton killing, but founded in necessity for the execution of the law, and the advancement of justice. But what was the charge against the prisoners here ? the word feloniously is introduced into two of the warrants, though the fact stated in them does not amount to felony. They are both signed on the same day ; and, to the shame of the commission of the peace ! by the same magistrate, for the same fact and purpose ; the one clearly supplemental to the other. It was with reluctance that he observed upon another warrant, by another magistrate, that the word burglariously appeared upon the face of it, though upon inspection, the entry charged as a crime upon the warrant, was not done with any felonious intent, and such an intent must always appear, in order to constitute that crime which is denominated burglary. The whole seemed one connected plan, to give a colourable foundation for the killing of the prisoners : he meant Hipson and M'Donnell ; and he had no doubt but that in point of law, that killing under all the circumstances of the case amounted to murder. It was most necessary to shew, that the persons who committed this murder, acted by the procurement of the prisoner ; and of this there was abundant evidence, if they believed it.

Evidence of a plot laid by the prisoner against the lives of the deceased and Gallagher ; a plot to take away their lives under colour of law ;—charges of felony introduced into warrants when no felony appeared to have been committed ;—a law book produced by Brecknock, and a passage read out of it by the prisoner, to shew that it was lawful to shoot a prisoner charged with felony, in case of a rescue. Evidence of great joy expressed by him when the unhappy men were taken under these warrants. Evidence of directions given by him to be sure to kill them if there was even the colour of a rescue. Evidence of a sham rescue contrived by the prisoner for the purpose. The deceased killed under colour of this rescue. Evidence of great dissatisfaction expressed by him at the escape of one of the unhappy victims ; and the horrid expression of “dead men tell no tales.” All this and more had been laid before the jury, and was sufficient, if they believed the witnesses, upon whose credit it was their province to decide, to bring the charge of procuring the murder to be committed home to the prisoner.

He then observed upon the evidence of some witnesses examined by the prisoner to impeach the credit of the witnesses for the crown. Whether the evidence of those witnesses contradicted that of the witnesses for the crown, in points so material as utterly to destroy the credit of the latter, he must leave to the jury to determine. Upon the whole, if they believed the witnesses for the crown, they ought to find the prisoner guilty ; and if not, they ought to acquit him.

After Mr. Baron Power had also addressed the jury, they retired, and in about fifteen minutes brought in a verdict of guilty. Fitzgerald was then remanded, and the trials of the other persons concerned in the horrid business were proceeded with.

Timothy Brecknock, an old Scotch methodistical attorney, who was Fitzgerald's legal adviser, and five other prisoners—the two Fultons, Newing, Rehenny, and Simpson, were convicted.

The evidence was nearly the same as in Fitzgerald's case.

When Brecknock was brought to the bar, he applied to the court, and begged leave before his trial to pray to his Heavenly Judge for about two minutes. He accordingly fell upon his knees, and remained in silence for some time. When he was desired by the Clerk of the Crown to look to his challenges, he asked, “How it was possible for him, an alien born, to make exceptions to persons, according to consanguinity, up to the 5th degree ; but he would make a general challenge of all the

inhabitants of Castlebar, all of the name of M'Donnell, and, he believed, all of the name of Higgins."

During the trial, Judith Kilgallen, a servant maid at Mr. Fitzgerald's, one of the witnesses for the defence, was asked by Mr. Stanley what time Mr. Brecknock was in the habit of getting up in the morning. Upon which Mr. Brecknock himself interrupted, and said "that he always rose fifteen minutes before sun-rise to waft his prayers to Heaven."

The evidence on which Brecknock was convicted shewed him to be the main adviser and instigator of the whole diabolical plot.

After sentencing the five minor criminals to death, Chief Baron Yelverton thus passed judgment on the other two:—

Timothy Brecknock, if it is possible there can be any degree of guilt beyond the crime of which Mr. Fitzgerald is convicted, it remaineth with you; for under the colour of the law, you devised an artful and a wicked scheme to commit a horrid and a barbarous murder. The laws of the land demand your life as a just forfeit for the blood which has been shed; and those deluded wretches whom you inveigled into your plot, and whom you deceived under hopes of safety, to become the instruments of your horrid designs, are objects of pity, when compared to the magnitude of your guilt. You made their ignorance the means of your purposes. Unfortunate old man! happy had it been for you that you never had known law at all, or that you had known it better. The unhappy gentleman who is now at your side would not have been brought to the wretched situation in which he now stands, or to the dreadful end which must now await him. Miserable man! you are fallen a victim to your own subtleties, and become the dupe of your own cunning. The venerable appearance you have assumed, and the sanctity which you affect, I fear are but put on as a disguise for the concealment of your wickedness. The law, which you endeavoured to pervert, has furnished the detection of your crime, and will shortly award the punishment which attends your conviction. Your jury, from a mistaken lenity, have recommended you to mercy, not that they doubted of your guilt, but that they pitied your age and your infirmities. Your crime is by many degrees of the deepest and blackest dye, and it only remains for me to pronounce the dreadful sentence.

He then passed sentence upon him.

The Chief Baron then desired the Clerk of the Crown to proceed; who

bid the jailor put George Robert Fitzgerald to the bar; and the Chief Baron proceeded by saying:—You stand convicted of provoking and procuring a horrid, foul, and barbarous murder. It is my duty, and a painful task indeed I feel it, to pronounce that sentence which the law has annexed to your crime. After a long and solemn trial, in which you had every benefit of able counsel, and experienced every indulgence the court could shew, you were convicted on the clearest evidence by a jury of your countrymen, in two instances of procuring the murder of two of his Majesty's subjects. An offence which our laws so justly hold in abhorrence, that they have placed it in an equal degree of guilt with high treason against his Majesty's person. In your case, which is an uncommon one indeed! it is attended with a degree of cunning and contrivance which exceedingly aggravate its enormity. But that very cunning, which you vainly hoped would have screened you from punishment, has rather led to the detection of your guilt. The laws of your country which could not endure that they should be made the instruments of their own violation, and the blood of the unhappy gentlemen who had the misfortune to fall into your hands, and whom you sent into the other world with all their sins upon their heads, call aloud for punishment, and require your life as a forfeit to public justice. Even Providence has interposed that justice might not be disappointed, and in the midst of murder preserved the life of one man as a witness for the discovery of your crime. The hand of God protected your life from assassination, that it might be offered up as a sacrifice on the altar of public justice. In the melancholy situation to which you have reduced yourself, it might be some degree of consolation to your feelings, that your ignominy and punishment were confined to your own person, but your miserable family, though innocent of your crime, are, in some measure, involved in your disgrace, and share, unjustly, that shame which your ignominious end brings down upon them. The aged parent who bore you in her womb; your tender daughter, the offspring of your loins; your wife, the inconsolable partner of your bed, partake of your disgrace. You came into the world with the advantage of talents, which, if properly cultivated, would have carried you through life with respectability and honour. See how you have misapplied them. Blest with the recommendation of birth and fortune; allied to great and respectable connexions; possessed of every qualification requisite to render you an ornament of society, and a valuable member of the community, you are now sunk to the lowest extremity of

human infamy and shame. With a mind susceptible of honourable feelings, you are become an outcast—a victim to the laws of the land which you live in. It is my duty to pronounce to you the dreadful sentence of the law ; but before I do so, let me express my earnest hope, that during the time which the mercy of the court has allowed you, you have by a sincere repentance and a heart thoroughly subdued to a sense of your guilt, recommended yourself to that mercy and forgiveness which you can only expect from the awful tribunal before which you must shortly appear.

Here his lordship was interrupted by Mr. Fitzgerald, who proceeded as follows :—

I beg leave to trouble your lordships with a few words. I shall be very short. I do not mean to cast blame anywhere. I accuse no one. From the evidence, the judges could have given no other charge : the jury could have found no other verdict. I think the verdict of the jury a just one, according to the evidence which was produced ; but I did not think such evidence could have been produced. I did not think such charges could have been made against me, or I should have been better prepared. I had no idea of being found guilty. There are some family affairs which I have been endeavouring to settle, and which in truth are not yet finished, that I could have wished to have completed. All that I request of your lordship is, to give me the longest day possible, that I may be prepared to meet my God. However guilty I may be conceived within a narrow circle, I hope in a higher one the unprejudiced part of the world will think me innocent. Those who know me from my earliest life know me incapable of such an action. I never feared death, nor am I afraid to meet it in any shape, in the most formidable, even an ignominious death. It may be thought I wish to solicit pardon. I would not accept of pardon after being found guilty by such a jury, because I know I could not face the world after it. It has been suggested, and I understand the report prevails, that I wish for time in order to commit suicide. As a worldly man I never feared to meet death ; and as a Christian, which I hope I am, and a good one, what sort of a passport would that be to the place of eternity ? I forgive every one ; and though I assert my innocence—I do not mean to say I have no sins ; I have many which overwhelm me, and I only request time that I may make my peace with God.

Fitzgerald having finished, the Chief Baron proceeded as follows :—



It is not in our power to grant your request. We are not the dispensers of mercy. Your offence is of such a nature, that my brother judge and myself thought ourselves justified to have ordered immediate execution ; nevertheless, from the hope that you might be better prepared to meet your approaching fate with becoming penitence, you have been allowed two days: If by time, you mean a few hours, I am sure the sheriff will shew you every humanity. It is my duty, and I call God and Heaven to witness, that it is the most painful one I ever performed, to pronounce the dreadful sentence of the law.

Here the Chief Baron pronounced sentence of death upon him to be put in execution the same day.

Of the criminals convicted, Fitzgerald, Brecknock, and John Fulton were hanged. Brecknock behaved with great courage in his last moments, and prayed fervently in the Greek language. This wretch had been well educated, and was a good classical scholar. In his profession he was what is called a sharp practitioner, and it is said that on one occasion he got a client acquitted, at the Old Bailey, on a question of moonlight, by means of putting in evidence a fictitious almanac. The execution of Fitzgerald himself is so remarkable, that it forms an appropriate conclusion to the whole of this terrible transaction.

At six o'clock in the evening of the day he was sentenced, the 10th of June 1786, Mr. Fitzgerald was brought out of gaol. He obtained permission of the sheriff to walk, and came through a bye-lane and then up the public street, to the place of execution. He was preceded by the hangman, who wore a large mask. He walked very fast, and arriving at the scaffolding, asked if that was the place. He was dressed in a ragged coat, of the Castletown hunt, a dirty flannel waistcoat and drawers ; both of which were without buttons ; brown worsted or yarn stockings, a pair of coarse shoes without buckles, and an old round hat, tied round with a pack-thread band. He fixed the rope round his own neck, first laying it bare, by taking off his cravat and unbuttoning his collar. He spoke to and shook hands with several of his acquaintance, and proceeded to the ladder. Mr. Henry, the clergyman who resided at Turlough House, following him. He desired him to be short, and having repeated one prayer, he shook Mr. Henry by the hand, and said, good bye to you ; on which he leaped with the utmost violence from the ladder, and the rope breaking, he fell to the ground. He immediately leaped up and loosened the rope from about his neck, and complained of the badness of



it. Another rope being brought, and some time being spent in praying, he again went up the ladder, and required Mr. Henry and the Rev. Mr. Benton, to come and pray by him. Having prayed a considerable time, he drew down his cap, having previously told the executioner he would throw down his hat as a signal, when to be turned off; but after having prayed for some time, he pulled up his cap again. He prayed with the most fervent devotion, repeating the prayers aloud, and frequently sending forth such heavy sighs, as would penetrate the most obdurate heart with feelings of compassion. He remained near an hour on the ladder, during which time Mr. Henry and Mr. Benton alternately went to him. He drew down his cap and signified his intention of making signal to be turned off; he drew up the cap again, and requested Mr. Henry to come and pray with him. He held his (Mr. Henry's) hand, grasped with his own, and in the latter moment of his affliction he prayed with great marks of contrition and devotion. The dusk of evening being set in, he was launched into eternity. From the inattention of the hangman in tying the rope too long, his toes touched the ground, until the humanity of a spectator raised up the body while the hangman shortened the rope. His body after hanging upwards of forty minutes, was cut down, and carried to his house at Turlough, and interred the next morning in the church-yard of Turlough.

## THE KILLING OF SIR FRANCIS KINLOCH, BART., BY HIS BROTHER, A MANIAC.

THE KINLOCHS of Gilmerton are a branch of one of the oldest families in Scotland. They were raised to a baronetcy of Nova Scotia so far back as 1686, and the unfortunate gentleman, Sir Francis Kinloch, whose death formed the subject of this trial, was the sixth baronet. He was the eldest son of Sir David, the fifth baronet, who had four other sons and three daughters. The lunatic, who killed Sir Francis, was Archibald Gordon Kinloch, his next brother, at the time a major in the army. Sir Francis had but just succeeded to the family honours, on the death of his father, in 1795, when this shocking event happened.

The trial for the murder took place before the High Court of Justiciary in Edinburgh, on the 29th June, 1795.

The prisoner, Sir Archibald Gordon Kinloch, who, as his brother died unmarried, had inherited the title, was brought to the bar a little before ten o'clock. He was dressed in black, and his demeanour was decent and respectful. He was attended by Sir Foster Cunliffe, Bart., his brother-in-law, and James Wilkie, of Foulden, Esq., his cousin-german.

The judges, in their justiciary robes, preceded by a macer, bearing the justiciary mace, soon after took their places on the bench in the following order, viz :—

Lord Justice Clerk [Mac Queen], Lord Eskgrove [afterwards Lord Justice Clerk], Lord Swinton, Lord Dunsinnan, Lord Craig.

In support of the prosecution, appeared, Robert Dundas, Esq., his Majesty's advocate [afterwards Lord Chief Baron of the Exchequer], Robert Blair, Esq., Solicitor General [afterwards Lord President of the Court of Session], John Burnet, Esq., Advocate, Mr. Hugh Warrender, Agent.

For the panel, appeared, David Hume, Esq.; Charles Hope, Esq. [afterwards Lord President of the Court of Session]; William Rae, Esq. David Monypenny, Esq., [afterwards a Lord of Session, and of Justiciary, and a Lord Commissioner of the Jury Court, with the title of Lord Pitmilley], Advocates. Messrs. James and Charles Bremner, Agents.

Silence being proclaimed, the Clerk of Court ordered a macer to call Robert Dundas, Esq., his Majesty's Advocate, for his Majesty's interest, against Major Sir Archibald Gordon Kinloch, of Gilmerton, Baronet; which being done, with the usual forms and solemnities, the Lord Justice Clerk desired the prisoner to attend to the indictment then to be read.

This being also done, the Lord Justice Clerk said,—Sir Archibald Gordon Kinloch, Baronet, are you Guilty, or not Guilty?

Prisoner.—Not Guilty.

After the panel had pled Not Guilty, Mr. David Hume, one of his counsel, addressed the court as follows :—

“ My Lord Justice Clerk :—Your lordships have heard the plea which the panel enters to the charge, the grievous and too relevant charge which is laid in this, as I must needs admit it to be, most necessary prosecution against him. And it now remains for those who have undertaken the care of his defence, however unequal to so important a task, to explain to your lordships, somewhat more fully than the panel for himself can be expected to do, the meaning of that plea, in the particular circumstances of this case; and to point out to you the scope and object of the proof in exculpation, which is intended to be taken on his part.

In pleading not guilty to the charge. the panel would, in the first place, be understood to intimate his denial of that which the prosecutor, in support of his libel, has to prove, and which if he cannot prove, he must fail in his prosecution, namely, that it is he who has been the actor of the miserable deed of slaughter here related; a thing which even if it be true, the panel cannot confess, having scarce any knowledge or remembrance of what passed on the occasion of himself, but from the relation of others only, which does not call for, nor would justify a confession.

But farther, my lord, and perhaps, in this case, still more material, if unluckily it shall appear and be shewn, that the panel's *hand* has been the unhappy cause of the death of his brother, then, my lord, in that event, his plea must be understood to mean this other, equally available

indeed but far less fortunate defence, that at least his heart and purpose have not been in the deed, but his hand only ; that it was not the work of malice and design, without which there is no murder, but of pure fatality and misfortune, which he could not avoid, and for which he is not the object of punishment, but of sympathy and commiseration. Because, my lord, at the time stated in this indictment, the panel was no longer to be numbered in the rank of reasonable and accountable beings, but by one of those high and dreadful visitations of Providence, to which we all, the wisest and best of us, are equally liable, and from which even thrones are not exempt, had been deprived of all self-government, of all regulation of his conduct, or control of his passions ; of all discernment of friend from foe, or of that which was meant to serve from that which was meant to harm him ; and acted, in short, under the blind impulse of a dis-tempered and furious imagination, which transported him wheresoever it would, which filled him with a thousand vain jealousies, horrors, and apprehensions, and would equally have turned his hand against whatsoever person had at that moment come in the way. This, my lord, is the panel's plea and main reliance.

My lord, while I state it for him, I am not ignorant of the reports and rumours that are abroad in the world ; rumours, I am sorry to say, which, on the very day preceding this trial, and even from the pulpit, the seat itself of truth and of charity, have, in contempt of decency and humanity, been industriously circulated to condemn him. I say I am not ignorant of these reports, and of the weight of prejudice and suspicion, with which, in consequence, I have to struggle ; not indeed with your lordships, whose breasts are void of every feeling of the sort, and who will listen to nothing but the information of the law, and the still voice of your own conscience ; but with the people at large, from among whom the persons who as jurymen are to decide on the panel's fate, are and must be taken. Nor, my lord, do I think it very wonderful that such should be their feelings on this extraordinary occasion. My lord, when they are told the miserable story of this event,—that a worthy and excellent gentleman, the representative of a flourishing and respected family, just arrived at the possession of his inheritance, in the course of nature, by the death of his aged father (a father in good time removed from the sight of such a scene among his children), when, my lord, they are told of this good and estimable person, surrounded with all the fair prospects of a long, a happy, and a useful life,—that he has been taken

off by a foul murder, a murder committed under his own roof, almost at his own table, and in the midst of his domestics, friends, and relations, and when to all this it is added, that he has fallen by the hand of his own brother, his guest at the time, and inmate of his house, by him

“ Who should against his murth’rer shut the door,  
Not bear the knife himself.”

No wonder, when this lamentable story is related, if, in the first emotions of pity and of indignation at so sad and strange a tragedy, any thing that can be said in defence of the unhappy author of so much mischief, is heard at first with a close heart and an unfavourable ear.

But my lord, how natural and how excusable soever these emotions (as surely they are most excusable), they are not, however, the just and proper emotions for this time and occasion; nor is this a disposition which they can be suffered to bring with them into the presence of this court of justice; into which, my lord, they are not called to assuage their passions, or indulge their feelings, with regard to an event, which, however deplorable, is past and gone, and cannot be recalled (I would it could); but to try as judges, coolly and impartially to try, nay scrupulously and tenderly to try, the manner of that calamity, whether it was of chance or of design, and to decide on the life and death of a frail and infirm mortal like themselves, who if, by the will of Providence, he has truly been visited with this grievous and sore affliction, and has been the instrument of destroying a brother, who never did him harm, and whom he never regarded but as a brother, is himself far more to be pitied than the deceased, and is no object of judgment, but for that Almighty Judge whose hand hath smitten him. These things, I trust and hope in God, that all now present, and those especially who have been called to the office of juryman, will, as they value the interest of justice, or their own peace of mind, remember and keep in view; and that there are no bounds nor measure to the idle, the confident, yet false and groundless stories which a whole country, commenting upon one, and that so marvellous and interesting a subject must give rise to.

My lord, I ask your lordships pardon for just touching on this topic, unnecessary I confess to your lordships, and to which I shall not again recur. With respect to the proper business before the court,—in stating the panel’s plea in the general terms I have already used, I have perhaps

sufficiently complied with the rule of court, and have stated that which you cannot but sustain as a relevant and awful defence. But, my lord, from anything I know of this case, I shall have no objection to lay the state and history of the fact somewhat more fully before the court; though, on the other hand, it cannot, and I know it will not be expected of me, to enter into a disquisition concerning the nature of madness (the thing of all others the hardest to be described), or that I should attempt to ascertain the peculiar class and character of the distemper to which this unhappy man was liable.

Suffice it to say, that it was no short, sudden, and unaccountable fit of frenzy, for the first time observed at the moment of the slaughter (though, allow me to observe, even this, if absolutely and fully proved, would in law, as in reason, be sufficient); but the panel's plea is far more favourable. Upwards of fifteen years ago, I believe in 1779, when abroad in the West Indies, in the service of his country as an officer, the panel had the misfortune to be seized with one of those dreadful fevers incident to the climates of that quarter of the world, and which raged with such violence at this time, that out of 5000 men, which composed their little army in the island of St. Lucia, no fewer than 1800 were, in the course of a few months, swept away. After a long and severe illness, and by the pure strength of his constitution, he escaped, my lord, at last, with his life; but I cannot say, fortunately escaped, for he left the better part of him behind; and from thenceforward was no longer the man he had been before. Not only, my lord, was there a great alteration of the temper and humour of the man, who, from social, cheerful, and good humoured, became sullen, jealous, and irascible, and extremely changeable and uncertain—not only was there a decay of the vigour of his intellect—a confusion, weakness, and cloudiness of understanding; but there had come to be at times a plain derangement and disorder—and this to such a degree, as had on one occasion tempted him to turn his hand against his own life, as he is now charged to have done against his brother's; and this an attempt of so violent and serious a nature (by cutting himself very deeply in the wrist), as occasioned him a confinement of three months before he was again fit to come abroad.

This, my lord, has been his state for years. But of late, and recently before the event which gives rise to this trial, things had plainly been verging, as happens with this malady, from worse to worse, into absolute insanity and deprivation of reason. Of which melancholy truth, my lord,

so much were all about him,—so much was the deceased himself convinced (not to mention the many strong proofs of it that will be given you in his actions and conduct), that every preparation had been made, the strait-waistcoat provided, a keeper engaged, and the proper attendants summoned to the house, to reduce him, by main force, into a state of coercion as a madman, who could no longer be suffered to go at large.

Happy would it have been for the deceased, happy for the panel, for the common friends of the family, and for the public, if this salutary, this necessary purpose, had, with due dispatch and resolution, been carried into effect, for to the undue delay of it, owing I admit to amiable but most unfortunate motives, was the catastrophe owing that ensued. Had it not been for that delay, and an awkward and ill conducted attempt in the end to seize his person, at a time when there was no force at hand to master him, Sir Francis Kinloch might now have been alive, and happy in the midst of his friends, your lordships would have been spared this painful piece of duty, and Sir Archibald Gordon Kinloch, a gentleman of birth and accomplishments, and born to happier prospects, would not now have stood exposed, a public and miserable spectacle, at the bar of a court of justice ; and under trial for his life.

My lord, when I have explained the defence in these terms,—a state of utter insanity at the time of the deed, and preceded by a course of infirmity and of occasional derangement for years, I trust I have laid a plea before you, which stands in no need of aid from cases, books, or precedents, to recommend it to the attention and favour of the court ; nor will I consume one moment of your lordships' time, which I am afraid will at any rate be long encroached on, with the quotation of any such, in support of that which nature, reason, and humanity prescribe."

The court having then pronounced an interlocutor, the trial of the facts before the jury consequently began. The evidence adduced extended to a great length, but, as the actual murder, and, indeed, the complete insanity of the perpetrator of it, admitted of little or no dispute, the following portion of the testimony sufficiently details the transaction, and shews the state of mind of the prisoner at the time.

#### EVIDENCE FOR THE CROWN.

Duncan Mc'Millan, writer in Edinburgh, examined by Mr. Burnett.  
Were you acquainted with the late Sir Francis Kinloch ?—I was.

Do you remember on Monday, 13th of April last, seeing Major, now Sir Archibald Gordon Kinloch?—Yes, I came from Edinburgh, with Mr. Alexander Kinloch, brother of the Baronet.

Do you remember of meeting a chaise, on your road to Haddington?—Yes.

At what time might this be?—Past three o'clock in the afternoon.

Did you observe who was in the chaise?—The prisoner at the bar was in it.

Did you observe anything particular in his appearance?—He threw himself back, as if wishing to avoid being seen.

Did the chaise stop?—No.

Lord Justice Clerk.—Were you going in opposite directions?—Yes.

Mr. Burnett.—Had you any conversation with Mr. Alexander Kinloch on this occasion?—He expressed surprise, because he thought his brother had gone to London.

Did Mr. Alexander mention the day that he supposed his brother had gone to London?—No.

You passed on to Haddington?—Yes, and stopped at Mrs. Fairbairn's.

Did you dine at Mrs. Fairbairn's?—Yes.

Had you any other company?—Yes, Mr. George Somner, who dined with us.

Did you see Major Gordon Kinloch there?—I heard the noise of a carriage. I looked out at the window, and observed it was the same chaise we had met. It stopped at Mr. Somner's shop.

Did you or any of the company go out?—Mr. Somner went out, and returned soon after with Major Gordon Kinloch.

Had you any conversation with the major?—Yes; I asked him how he was. He answered he was very ill.

Did he continue in the room with you or did he go out?—He went out, and returned again.

How long did you remain in Fairbairn's house; and how did the major behave when he returned?—When he came back we pressed him to take a glass of wine and water; and he was in so bad a state that he was not able to carry it to his head.

Did you go to Gilmerton that night?—Yes.

Who went along with you?—Mr Alexander Kinloch.

Had you not occasion to know that another person went along with



Mr. Somner?—Mr. Somner and the panel set out with the intention of going to Gilmerton, as they said.

Did they not go forward?—The chaise, in which the panel and Mr. Somner were, stopped at a place called Cockbird-tail, about a mile from Gilmerton. After they had stopped a considerable time, I asked, what detained them so long? And Mr. Somner answered, that the major had gone away.

Was a postilion sent after him?—One of the postilions was sent to look for him: he came back and informed us that he had overtaken the major, who said he was going to Haddington, where he said he would be found.

Did you then go on to Gilmerton?—Yes, we arrived there a little after ten at night.

Did both chaises go on?—Both.

Do you remember of anything being taken out of the chaise in which the major was?—I think there were some things taken out, but I was not present.

What happened after your arrival at Gilmerton relating to the major?—Mr. Somner came into my bed-room in the morning, told me that he was going to Haddington to look after the panel, and desired me to follow him as quickly as I could.

You went to Haddington then?—Yes, after breakfast, and inquired for the major, but could get no information of him.

Did you go back to Gilmerton that day?—Yes, I returned before dinner.

Was Sir Francis Kinloch at home?—Yes; also Mr. Alexander, Miss Kinloch, and a Mr. Low.

Do you remember anything that happened after dinner?—I remember there was a message brought to me, that somebody wanted to speak to me.

About what time was this?—About half-an-hour after dinner.

When was dinner?—We sat down to dine about five.

Who was the person that wanted you?—It was William Reid, the gardener.

What passed between you?—He told me that he had been up at Mr. Walker's, of Beanston, and that he had seen the major there, who was in a very disagreeable situation indeed. That he went up stairs and knocked at the door where the panel was. That the panel called out

who was there, and the door was half-opened from within. There was nobody in the room but the panel. He had a pistol in his hand, which alarmed Reid exceedingly.

Lord Justice Clerk.—He had a pistol, you say?—Yes, my lord. This is all that William Reid told me.

Mr. Burnett —How did you proceed?—I called Sir Francis out of the room to inform him; and the panel appeared soon after. I observed him before he came up to the house, from the window of the lobby.

Did he come into the house?—Yes, he came into the lobby.

What conversation passed there?—Very little.

Lord Advocate.—Do you recollect any part of that conversation?—His brother and I inquired how he did; and he said, very poorly.

Mr. Burnett.—Do you recollect where he went next? By the desire of Sir Francis, who took him by the arm, he went to his own bed-chamber, and I returned to the dining-room.

What happened next?—A message was soon after brought to Mr. Low, that Sir Francis had been taken very ill, and could do no business that night; upon which Mr. Alexander Kinloch left the dining-room, and went up stairs, and shortly after Mr. Low went away.

Had you occasion to leave the dining-room and go up stairs?—Yes, to the major's room.

What conversation had you with the major?—I do not recollect.

Was the major in bed?—He was lying on the bed, and part of his clothes were off.

Do you recollect any conversation that passed?—The major spoke and conversed a good deal with his brother, Sir Francis; but I do not recollect the purport of the conversation.

How long did you remain in the room?—Not long. I was there occasionally. The family went to supper about eleven, but the major did not come down.

Was Sir Francis in the room?—Yes.

Lord Advocate.—You saw the panel before at Fairbairn's, and afterwards at Gilmerton, did he appear in a better or worse situation at the latter period than at the former?—He appeared a great deal calmer, from the attention of his brother, Sir Francis.

Do you recollect the substance of what passed in conversation?—No.

Did he hold any irrational or incoherent conversation, either in your or his brother's presence, before supper?—I cannot say.

Did anything pass which impressed your mind at the time, that he was unfit to hold a rational conversation?—I did not think him perfectly collected.

Was he more or less collected than when you saw him at Fairbairn's?—He was more collected.

From what circumstance or appearance did you form this opinion, that he was not perfectly collected?—It was from his conversation. He wandered from topic to topic.

Mr. Burnett.—How long did the company sit at supper?—Till three in the morning.

Did any person join them?—Yes, Mr. George Somner.

At what time did he come there?—Between ten and eleven.

This was before supper?—It was.

At what time did you go to bed?—Immediately after supper.

Have you occasion to know if Sir Francis went to bed then?—He left the room before I did go to bed. He had occasionally left the dining-room in order to visit the major.

Did you see him afterwards?—I saw him in his bed-chamber, before I went to bed.

What did you say to him?—I advised him to go to bed.

How long were you in bed?—I was waked by Mr. George Somner.

Lord Justice Clerk.—There was only one Mr. Somner here?—Yes.

Mr. Burnett.—What was the occasion of Mr. Somner waking you?—To tell me that Sir Francis was shot.

Where did you go to?—Straight to Sir Francis's room.

In what situation did you find Sir Francis?—The servants were undressing him.

Did he speak to you?—He told me not to mind him, for there were plenty with him; but to go and prevent his poor sister from coming into the room.

Did you see any wound about Sir Francis?—I saw a wound, and was desired by Mr. Somner to put my hand upon it, to prevent the external air from entering.

Did you prevent Miss Kinloch from entering the room?—I went immediately to the door, when Sir Francis desired me, but could not prevent her from coming in. She came in and was very much distracted.

Did she remain in the room?—No, we were forced to carry her out. I returned, after seeing Miss Kinloch to her room.

Were any expresses sent off?—There was an express sent to Edinburgh for Dr. Munro and Mr. Benjamin Bell, and another to Haddington for

Mr. Richard Somner. I then went into the room where Sir Francis was, and supported him for half an hour, while Mr. George Somner was preparing bandages.

Lord Advocate.—Did any conversation pass between the deceased and you, on the subject of the event that had taken place?—None, only he said, “God Almighty help that poor unhappy man.”

Did you, in passing from your own apartment to that of Sir Francis, see the prisoner?—No, I did not see him again.

Was he not on the stairs, nor in the lobby?—No.

When did Mr. Bell arrive?—He came about eleven o'clock.

Was Sir Francis regularly attended by medical persons?—Yes.

Had you any farther conversation with Sir Francis?—I had some little conversation, but none on the accident, or the person who committed it, except what I mentioned before.

How long did Sir Francis survive the accident?—The wound was received on Wednesday morning, and he died on Thursday night about eleven o'clock.

You were intimate in the family of the late Sir David Kinloch—how long did that intimacy continue?—From the year 1762.

Were you intimate from the year 1780, downwards?—Yes.

When did Sir David die?—In February last.

Was the panel at that time in the house?—Yes.

How long did he continue after?—I cannot say; I went away.

Did Sir Francis ever go from home at any time, and leave his brother, his sister, and you at Gilmerton?—Yes. I came into Edinburgh before the session rose, and before that time Sir Francis had gone to Edinburgh.

Did you remain at Gilmerton during the time of Sir Francis's absence?—Yes.

Who acted as landlord then?—The major.

During any time previous to the 12th of March, had you occasion to observe anything particular in the conduct of the prisoner?—Nothing, except that he was dissatisfied with his father's settlements.

Does it consist with your knowledge that Sir Francis had any particular reason for going to Edinburgh?—Yes, it was to take the advice of counsel on his father's settlements.

Do you not know that it was on account of the dissatisfaction that the panel had expressed?—Yes, from the time that Sir Francis left Gilmerton to go to Edinburgh, till the day that I left it also.

Did any conversation pass on that topic?—Yes.

What was the tendency of that conversation?—The panel expressed his dissatisfaction in several conversations.

From the year 1780, downwards, did you observe anything particular in the conduct of the prisoner?—He was remarkable for being exceedingly troublesome when he got drink.

Do you recollect any other peculiarity?—He was sometimes not correct, not sane.

Do you allude to the time he was in liquor, or otherwise?—He was confined for insanity once in Edinburgh.

Do you recollect when?—It was a few years ago.

Is it from that circumstance, or any other, that you formed your opinion of him being insane?—It is from that circumstance together with other appearances.

Of what nature were these other appearances?—That of being troublesome in company; and, at a former period of life, he was one of the most mild and pleasant men in company I ever saw.

Did you ever observe any appearances, when sober, which could induce you to suppose him insane?—I remember once, some years ago, that he came to my bedside, in my own house, about five in the morning, and said he was going to set off for Greenock, to see Major Mackay.

Lord Justice Clerk.—Had he not been in town?—No, he had been travelling all night.

Was he sober?—Yes.

Lord Advocate.—Was it from his conversation or appearance that you judged him insane?—From both.

Did he tell you his purpose in going to visit Major Mackay?—No.

Nor where he had been?—Yes, at Berwick.

Did you attempt to dissuade him?—Yes.

Did he state any reason why he was going to see Major Mackay?—None.

Did you take any steps in consequence of this?—No.

Did you ever communicate to his family the opinion you had formed?—I think that I must have mentioned to Sir Francis, that I thought him insane.

Do you know of any cause of enmity, or of any grudge, subsisting between the panel and his brother?—His conduct when in drink was very extraordinary.

Do you remember anything more remarkable than another?—I remem

ber very high words passing between them, and the prisoner struck Sir Francis.

Did Sir Francis give any cause for this?—He certainly was in a great passion.

Was there any cause for this passion?—The panel had given great abuse to a gentleman at his father's table, and Sir Francis reprov'd him for it. He struck him with a glass tumbler and wounded him upon the face.

Were you present at the abuse that had taken place?—I was.

In your opinion was the abuse such as to justify Sir Francis for taking his brother to task?—I think it was.

What happened in consequence?—I carried Sir Francis up stairs, and dressed him.

Sir David was not informed of it then?—Not for some time.

Does it consist with your knowledge that the panel was obliged to leave his father's house on account of this misunderstanding?—I think he was.

How did Sir Francis take this behaviour?—He forgave him. He did not feel any resentment.

During the last years of your acquaintance with the panel, was he accustomed to leave the house suddenly, without warning, or telling where he was going?—Yes.

And did he come back without telling where he had been?—Yes.

Were any steps taken, or proposed to be taken to confine him?—I never heard of any during all this time, till immediately before the present event. I mean till after Sir David's death.

Mr. Burnett.—Had you occasion to know that the major came to Edinburgh, and resided there, some time before his brother's death?—Yes.

How long before his death?—A few days, and he lived in the Black Bull inn.

In what state did he appear; was he able to converse on general subjects?—He was.

Do you remember any difference in his appearance from what you had seen at Gilmerton?—I thought he had been living harder than usual.

Did you observe any other alteration?—No.

Lord Advocate.—You tell us you never knew of any steps being taken to confine him?—None, until I went to Haddington.

When?—On the Monday evening.

Was that the first time?—Yes.

What induced the family to do this?—The deranged state he was in.

Were any steps actually taken?—Mr. Somner returned from Gilmerton to Haddington for the purpose.

Was there any preparation made in the course of Tuesday?—None, till Tuesday night. The panel came home about six, and Mr. Somner was sent for about ten; and it was proposed to secure the panel, but Sir Francis delayed it.

Who proposed it?—Sir Francis himself proposed it.

*Duncan M'Millan cross-examined by Mr. Hume.*

Deponed, That the panel, when in Mrs. Fairbairn's, attempted to swallow a bit of meat, and could not: that his brother Alexander assisted him to carry the glass to his head, on account of the shaking of his hand: that he was unquiet and restless; kept walking backwards and forwards through the room, and went out to the stable-yard and garden: that he seemed oppressed and unhappy, and hardly joined in the conversation; that he gave no reason for his purpose of going to Edinburgh, nor for returning to Haddington, nor for calling at Mr. Somner's: that the agitation of his person, and the shaking of his hand, appeared to the deponent to arise from illness, and not from liquor: that he did not press drinking, or show any desire for it; on the contrary, drank less than others of the company; and that of course they would not have assisted him to carry the glass to his head, if they had thought that he had already got more than he was the better of: that Mr. Somner gave directions to the ostler to look after him, as appearing ill and deranged, and unfit to take care of himself: that on the evening when the panel struck his brother, it was after supper, and the bottle had been on the table, and the party drinking from dinner to supper: that on the evening of Tuesday the 14th, Mr. Somner had brought a strait-waistcoat with him to be put on the panel, and a nurse or keeper to attend him.

Lord Justice Clerk.—You have deponed to various meetings with the panel before the accident happened. Now, according to the best of your judgment, was he in a capacity to know the difference between moral good and evil, and to know that murder was a crime?—I cannot say.

Say to the best of your judgment.—I think he was in a capacity to judge between good and evil.

Lord Eskgrove.—Had you any reason to believe that the prisoner was acquainted with the coming of the woman from Haddington?—No.

Mr. Trotter (one of the jury).—Did Sir Francis, after coming out of the major's room, on the night on which the accident happened, speak as if there had been any difference that night between him and the major?—No.

*George Somner, surgeon in Haddington, examined by Mr. Solicitor-General Blair.*

Were you well acquainted with the deceased, Sir Francis Kinloch?—Yes.

Do you remember of receiving a message from Gilmerton on Monday the 13th of April last?—A messenger came from Miss Kinloch, desiring me to come immediately and speak to her. I went there about one or two o'clock.

What conversation passed betwixt Miss Kinloch and you?—It was to prevent major Kinloch from going to Edinburgh, for she thought him in a very unsettled state of mind, and not fit to undertake the journey.

Did you see the major?—I saw him before I saw Miss Kinloch. He was in a post-chaise at the door. He said he was going to town.

Did he accordingly set out?—Not immediately. I observed him in the chaise very much agitated; and, from his appearance, suspected it to be on his account that Miss Kinloch had sent for me.

What conversation had you with Miss Kinloch?—She told me that he appeared in a strange situation; that he had come there on the Sunday, with the buckles or strings out of his shoes.

What did you say?—I told her that, from the observations I had made myself, I concluded him perfectly mad, and that he should not be allowed to go about.

What were the circumstances that made you think so?—From the appearance of his eye, and the agitation in which he seemed to be.

Has it been common for you to attend mad persons?—No.

What farther passed?—I went down stairs to try to stop him from going away. I told him if he would wait till I got some little refreshment, I could go with him to Haddington. This was the argument I made use of to induce him to come out of the chaise.

What did he say to this?—That he could not stop, as he would be too late for dinner at Edinburgh; and he accordingly ordered the postillion to drive on, and drove away.

After this, had you any further conversation with Miss Kinloch?—Yes. I urged the propriety and necessity of confining him. I told Sir Francis



the same thing that I had told Miss Kinloch : and he expressed a desire that I might follow the major to Edinburgh, and take the advice of the two doctors Homes as to what should be done.

Did you return to Haddington that night?—Yes ; and when I returned there, I received a message from Mr. Alexander Kinloch and Mr. M'Millan, who were at Mrs. Fairbairn's, desiring me to go there. I went there and saw Mr. Alexander and Mr. M'Millan, and told them what had passed at Gilmerton. They told me that they had met the major going to Edinburgh. After dinner Mr. M'Millan observed the chaise in which the major was. It was driving as if he had been coming from Edinburgh. We looked to see which way the chaise would go, and it stopped at my shop door. I went down and asked him to come up to Fairbairn's. He agreed to come. He shook hands with his brother Alexander, saying, he was very ill, and would never be better. He then walked about the room in great agitation, and shaking his head : and he afterwards left the room.

Did his brother or anybody ask him to stay?—We all asked him to stay and take some dinner, and either go to Edinburgh or return to Gilmerton.

What did he say?—He tried to eat and could not ; and he sometimes sat on the foreshide of a bed, which happened to be in the room, but would not lie down.

Did he afterwards agree to go to Gilmerton?—Yes. I went in one chaise with him, and M'Millan and Mr. Alexander went in another. On our way, the panel desired to get out of the chaise.

Did he give no reason?—No.

Did he return?—No. I desired one of the postillions to go after him. He said he would not return, because he was going back to Haddington.

What was done then?—We went on to Gilmerton.

About what time did you arrive there?—Between nine and ten.

Did you stay all night.—Yes.

Were Sir Francis and Miss Kinloch there?—Yes.

How long did you stay at Gilmerton?—I staid all night, and returned next morning.

Did you receive any message from Gilmerton the next day, being Tuesday, the 14th of April?—Yes. I received a card from Mr. M'Millan, informing me that the major had arrived, and desiring me to come down, and bring what was necessary.

What did you understand by this?—I understood that it was meant to confine the major, and that I should bring a strait-waistcoat. I accordingly set out, and carried with me a strait-waistcoat, and sent for a nurse, who sometimes attends deranged people.

And you went to Gilmerton with the nurse?—Yes, and I arrived there about ten o'clock at night.

After your arrival did you take any measures?—I went to the major and found him pretty quiet in his bed-room, but still with the same wild look as the day before.

Had you any conversation with Sir Francis or any of the family after you came?—Yes.

Did you tell them that you had brought the waistcoat?—I certainly did. They agreed in the propriety of securing him.

What was your reason for not securing him?—I spoke to the servants frequently, the butler, Miss Kinloch's servant, &c., but most of them were either averse or afraid to do it.

Do you know what made them afraid to do it?—No.

Had you observed arms about the major?—No, not then.

You supped at Gilmerton. Did you see the major?—He came down to the parlor about three in the morning. He came down twice. When he came in for the first time he walked about distractedly, and complained of a violent pain in his bowels.

Had you any more conversation about the pain in his bowels?—He blamed, as the cause, a dose of pills which Sir Francis had given him, and which, as I understood from Sir Francis, were analeptic pills.

This was the first time he spoke of them?—Yes. He said these pills had done him a great deal of ill, and he believed he was poisoned by them. I advised him to go to bed; upon which he left the room.

Did you go up to his bed-room?—No.

Did he come down again?—Yes.

When?—Soon after; within a very few minutes.

Had you any conversation on that occasion?—No.

Lord Advocate.—After you came with the strait-waistcoat, did you see the major at any time out of his own room before he came down to the parlor?—I saw him once, and spoke to him. I said he had much better not go down in the situation he then was in, for that Miss Kinloch was not gone to bed. This was between one and two o'clock of Wednesday morning; and the major had no clothes on except his breeches and shirt.

Mr. Solicitor General.—Tell us all that passed.

Witness.—I said to him, do not go down in that situation. He said he would go down, for he wanted to see Frank. I took hold of him by the arm, and said softly, “Dear sir, do not go down in that situation.” When I took hold of him by the arm, he drew a pistol. I let go his arm. He said, “Take care of yourself.” At that very time Sir Francis was coming up stairs. Sir Francis said, “Gordon, what is the matter?” He replied, “I do not know what to do. Oh! I am ill, I cannot sleep.”

Did you or Sir Francis say anything to this?—The major went into his room; I believe Sir Francis went in to him. I went down stairs soon after.

Mr. Solicitor General.—You have told us that he came down twice?

Witness.—Yes, this was before; the first time.

Tell us what happened the second time.—He came down in the very same distracted manner; he walked up and down; nobody spoke to him. Sir Francis went out after him, then Alexander, and then I followed.

Had he all his clothes on when he came into the parlour?—I do not remember. He generally had one or both his hands in his breeches pockets. The pistol that I had seen made me suspect that he had his hands in his breeches pockets, holding pistols.

From what part of his clothes did he produce the pistol when you saw it first?—From his breeches pocket. When I followed them, as mentioned before, and had come without the parlour door, I saw the flash of a pistol. I was then between the parlour door and the entrance. The flash was in the stair.

Where was the panel and where was Sir Francis at this time?—After seeing the flash, I was so confused, that I cannot recollect; but I heard Sir Francis cry he was done for. I ran up to them; they were standing in the stair. Whether I assisted in securing the panel I do not remember; but I assisted Sir Francis in going up stairs.

After Sir Francis was carried up stairs, what did you see?—I saw a wound about three or four inches below the breast bone. When he was laid in bed, I dressed the wound.

Did you apprehend it to be mortal?—Yes.

Did you or Sir Francis say anything during the time you were with him?—He said it was madness in him to attempt securing his brother. I said certainly it was.

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Was there any other assistance sent for?—Yes. Dr. Monro, Mr. Bell, and my brother.

When did Sir Francis die?—He died on the Thursday evening, about eleven o'clock.

Are you satisfied that the wound was the cause of his death?—I am satisfied it was.

Did you examine the body, along with the other gentlemen?—Yes.

Did you find the bullet?—I was present when it was extracted. Mr. Bell extracted it, while Sir Francis was alive.

The witness was shown a certificate of what had been observed in opening the body of Sir Francis after his death, and was asked if he had signed this certificate, to which question he answered in the affirmative.

Did you see the panel again, or had you any conversation with him, after you went up with Sir Francis?—I do not remember of seeing him till he was in Haddington gaol. After the pistol was fired, I remember nothing about him.

When did you see him?—I saw him in Haddington gaol, on Friday, the 16th of April.

What conversation passed there?—I had no particular conversation. I went up with Dr. Home, and Mr. Goldie, the minister of the parish. Mr. Goldie said, that, as his brother was now dead, it fell to him to give directions as to what was to be done at Gilmerton; for, though he was accused of a most horrid crime, yet he was not yet indicted, nor tried by the laws of his country. He replied that he was in such a state of mind, that he could give no directions or advice about anything. The next thing that Mr. Goldie said, was, that it was the opinion of lawyers that he might, in the presence of witnesses, appoint Mr. Fraser and him to act for him.

What answer did the major make?—I do not remember the answer; but he agreed to it.

You said the major appeared in great horror, what did he say?—He said it was a fatal day. Afterwards Dr. Home asked him if he would wish to see Major Mackay and Dr. Farquharson. He said he would be very glad to see them.

Lord Advocate.—When Sir Francis left the parlour immediately before the accident, did you know for what purpose he went?—No.

What was your purpose?—Sir Francis and I agreed as to the propriety of securing the major, if he came in a second time, but I did not leave the room with the intention of securing him.

Did you send to any of the out-servants to assist in seizing him?—I know they were sent for.

Did you know that they were dismissed?—No. I did not see any of them at the time the accident happened.

When did you see any of them?—I saw them between twelve and two o'clock. I do not know that they were sent home.

Lord Justice Clerk.—The last time you saw the panel previous to the event that took place, is it your opinion that he was then in such a situation as not to distinguish moral good from evil, and not to know that murder was a crime?—I cannot say; I do not know what he could distinguish.

Is it your opinion?—When I saw him on the Monday and on the Tuesday, I considered him mad.

Mr. Solicitor General.—Was he mad to such a degree as not to be able to distinguish good from evil?—I cannot answer the question in any other way than that I thought him perfectly mad.

The witness was ordered to withdraw.

Mr. Hope.—I could have wished that a question of this nature had been allowed to come from the prosecutor, because then I might have commented upon it with greater freedom than I can do, since it has been suggested by the court. The question, however, I think was a proper one, and it was properly answered. The witness, after repeated interrogations, said, that he could not take upon him to tell what the panel could distinguish; but that when he (the witness) saw him on the Monday, and on the Tuesday, he considered him mad. He says again, "I cannot answer the question otherwise than that I thought him perfectly mad." And I must say, that, as a professional man, he could not answer it otherwise than he has done. My lords, I am not of the witness's profession, but as a man who has paid some attention to the human mind, and to human nature, I must repeat that the question was answered as it ought to have been.

My lords, I have made some observations on madmen myself. Persons in that unhappy situation are too often exposed to the impertinent visits of strangers; at least it used to be so in London; and well I remember, when at an earlier period of life, led by the idle curiosity of a boy, I have, gone to view the places of their confinement. But, my lords, I hardly ever saw a man so mad (though lying naked and chained, on straw), who if the abstract question were put, do you think murder a crime? would not answer in the affirmative. Madmen, my lords, will often talk

rationally on any subject, until you come across that particular topic which has deranged their understanding. I therefore submit, that it is not proper to press the witness for a more particular answer. Has he not said that the panel was perfectly mad? The prosecutor talks of degrees of madness, but there is no degree in perfect madness; this is already the superlative degree. And when the witness, a professional man, has declared that he cannot answer the question otherwise, I say that any other answer which he may give, cannot be an answer according to his conscience.

My lords, had not the witness been a professional man, I should not have insisted so much upon the point; but as a man who, from his profession, must know something of the nature of this disease, I do repeat, he could not have answered the question in any other manner; and I do submit that he cannot be forced to give any other answer than that which he has already given.

Lord Advocate.—My lords, I do not intend to press the witness any farther upon that point. If my brother supposes that I meant to press him to make an answer contrary to his conscience; that I meant to push him to give a different answer from that which he has chosen to give; he has much mistaken my meaning. When I proceeded to press him a little farther, it was only to discover what was meant under the words “perfectly mad.” What I mean to press from him goes thus far, to see whether the same general question, at any particular period of time, will receive the same answer. This I contend I am entitled to do, and I shall judge, from the answers that may be given, what inference I shall draw to the jury.

The witness was recalled.

Lord Advocate.—When you saw the panel at Mrs. Fairbairn's on the Monday, was he in such a situation as to discern good from evil, or to know that murder was a crime?—I cannot say that he could not.

When you saw him next night in his own room at Gilmerton, down to the time of his appearance in the parlour, can you say during that period, from ten at night to three in the morning, that the panel was in a condition to discern good from evil, or to know that murder was a crime?—I have not had much practice in cases of insanity; and what such persons think, I am at a loss to say.

You have told us that you cannot say that when at Fairbairn's, the panel could not discern good from evil; and that with regard to the

second period you have not had much practice in cases of lunacy ; very proper answers. Now, did you observe any difference in that time, and on what side lay the difference?—I did not observe any difference until he came into the parlour, when he appeared worse.

*Mr. George Somner, cross-examined by Mr Hume.*

Deponed, That when at Haddington, the panel was restless, agitated, and unhappy ; could not eat ; trembled so as to need assistance in carrying a tumbler of wine and water to his head ; did not seem disposed to drink, and got no spirits there that he knows of ; that the motion of returning to Gilmerton was not the panel's own thought, but the witness's motion.

Mr. Hume.—If you were carried from this room to Bedlam, and there shewn a lunatic in his cell ; if this lunatic, on being asked if murder is a crime, should answer, Yes, would you, on the faith of that answer, think it safe to put yourself in his power, or to venture within his reach?—I would not.

May not a person be mad, and yet know his keeper or others who are much about him, and be liable to be intimidated and controlled by them?—I think he may.

Do you think that the panel, on the Tuesday evening when he came to the parlor, was in such a situation of mind as to be capable of distinguishing the good or evil intentions of those who came near him or interfered with him ? or, to be more particular, do you think he was able to distinguish and be thankful for the good intention of a medical person like yourself, who attended to serve and assist him, from the intention of an enemy who should come to harm him?—I do not think he could.

If you had attempted to wrest the pistol from him at the top of the stair, should you have run a risk of your life?—I think I should.

If you had tried to seize him when Sir Francis did, or if you had been in the same position as Sir Francis was with respect to him, at the time when the pistol was fired, do you believe that you should have met with the same fate?—I believe I should.

Did it appear to you that the panel, when Sir Francis was with him, was soothed and pleased with his kindness?—It did rather appear to me that he was more quiet when Sir Francis was with him than at other times.

Was he ever alone with Sir Francis in the course of the Tuesday evening?—I did understand that the panel and Sir Francis were at times in

the panel's bed-room by themselves, but I cannot positively say so from my own knowledge.

In the course of the Tuesday evening were the panel's conduct and appearance such as to persuade you that the advice which you had given to have him secured and confined was a wrong, or groundless, or unnecessary advice?—No, I still thought it right.

At the time when the panel fired the pistol, was he fully dressed so as to be in a condition to make his escape if he had been so disposed?—He was not.

Lord Swinton.—You say you brought a woman and a strait-waistcoat; does it consist with your knowledge that the panel was informed of this?—I do not think he was informed of the waistcoat, but he knew of the nurse.

Lord Advocate.—I have asked you already your opinion of his sanity on the Monday and Tuesday. I put the same question again: when you saw him in jail, did you then think him capable of discerning good from evil, and of knowing that murder was a crime?—I thought him then sensible.

Mr. Moncrieff (one of the jury).—How long have you been surgeon to the family of Gilmerton?—Twelve years.

Do you know of any hereditary diseases in the family?—No.

Can you assign any cause for the panel's derangement?—No.

Do you know whether the panel, at any time previous to the accident, endured a remarkable degree of cold?—I do not know.

Do you know whether he resisted the taking of food?—I mentioned that he would eat nothing on the Monday.

Do you know whether he used to sleep well?—I have observed that he was very restless.

Do you think that the resistance of cold, hunger, and sleep, affords the best marks of distinguishing insanity, from cases where it is only feigned to serve a particular purpose?—I think it does.

Mr. M'Aulay (another of the jury).—When you saw the panel in the chaise, did he do anything, or say anything outrageous?—No.

Did you think him drunk?—No.

Do you think that drink might have produced the same behaviour?—I never saw him in the same situation before.

Do not you think that the passions of the mind, such as fear, anger, revenge, jealousy, &c., may produce temporary fits of insanity?—I think they might have put a person much in the same situation.

Among the witnesses to prove the prisoner's insanity, the following



evidence from a brother officer, already alluded to in the course of the trial, is of affecting interest :

*Major John Mackay examined by Mr. Rae.*

Do you know the prisoner at the bar ?—I do.

How long have you been acquainted with him ?—My acquaintance with my unfortunate friend, Major Gordon Kinloch, commenced in Ireland in the year 1767, when he joined the 65th regiment, at Cork, as an ensign, to which regiment I then had the honour to belong. He was particularly recommended to my care by the late General Mackay, who at that time was our colonel. It was there that the foundation was laid of that strict friendship and intimacy which have ever since uniformly subsisted between us. He continued with us until autumn, 1779, when he obtained the majority of the 90th regiment, and was soon thereafter ordered to embark for the West Indies. Perhaps this may be the proper time for me to mention the footing upon which Major Gordon lived with the 65th, during the twelve years he served in it ; and therefore I take this public opportunity of saying, that he was friendly, generous, and benevolent, universally beloved and esteemed by every officer and soldier in the regiment, and, when he left it, as universally regretted.

During the period which you have mentioned, did you ever observe the prisoner liable to fits of bad humour or jealousy ?—No ; I do not recollect that during the whole of that period I ever saw him seriously out of temper.

After that period, did you come to understand, or had you occasion to remark, that a material change had taken place in the prisoner's disposition, and that he was at times liable to derangement of mind ?—I learned afterwards that the major had been attacked with a very violent and dangerous fever, in the island of St. Lucia, which affected his brain much ; and I have great reason to believe that he has never entirely got the better of the effects of that malady ; and I am the more confirmed in this belief from the following facts which I beg leave to state to the court. After the 90th regiment returned to England, at the close of the late war, I met several of the officers of that corps, who all agreed in the opinion that the major had been occasionally deranged in his mind, and that his health had never been thoroughly re-established since he had that dangerous fever to which I have alluded. In the year 1783, I met him in London, where we were much together ; and although I could perceive that he was not so connected and coherent in his discourse as he formerly used to be, yet I was

not sensible at that time that he had any deranged symptoms about him. The first time that I had occasion to make any observation upon this afflicting subject, was at Mr. Charles Dalrymple's house, at North Berwick, in 1785. I accompanied the late Sir David Kinloch, Miss Kinloch, the late Sir Francis Kinloch, and the major, to pay Mr. and Mrs. Dalrymple a visit. In the course of the evening, Major Gordon and myself sat down to play a rubber of whist at the same table ; and I observed that he had been throughout the day in as good health and spirits as I had ever seen him in. After we left off cards, we walked out of the dining room together, when I was much surprised indeed to find that he had entertained an idea as groundless as it was improbable, nay, I may add, impossible) of my having affronted him, by endeavouring to place him in a ridiculous point of view, and to make him the butt of the company ; he said I was the last man from whom he expected such unfriendly usage, and that he never would forget it. The effects which I had been told his West India fever sometimes produced in his mind, struck me so very forcibly, that I was instantly convinced he was then in a certain degree deranged ; and although I used every friendly argument in my power to remove his suspicions, which were as groundless as they were unkind and unjust, yet these had no effect. Next day I was obliged to come to Edinburgh, and in consequence I wrote a letter to Mr. Duncan M'Millan, who was very intimate at Gilmerton, desiring him to show it both to Major Gordon and to the late Sir Francis Kinloch, in which I explained the whole matter ; and Mr. M'Millan wrote me that he had done so. Some time afterwards, I met Sir Francis, who upon the subject being mentioned to him, said that he was perfectly sensible that I had not given his brother the smallest cause for offence at North Berwick ; that he was convinced his temper and disposition were totally changed ; that he had often observed him to behave in a most inconsistent manner ; and that he attributed all this to his West India fever, for he was not the same man since his return to Europe, that he had been before he went out to the West Indies. In summer, 1790, I happened to be one day in the coffee room at Greenock, and was much surprised to see Major Gordon enter. I immediately perceived a wildness in his looks, which I had never seen before. He told me that he had posted all night from Berwick, without sleeping, to find me out, in order to communicate to me matters of the utmost consequence to himself, as he looked upon me to be his most confidential friend. I asked him what he meant ; upon which he took a letter out of his pocket,

and gave it to me, saying, "Read that, and then be convinced how ill I have been treated by my whole family." This was a letter from his brother, Mr. Alexander, acquainting him with the death of their brother, Captain David, very expressive of the distress the family were in upon that melancholy occasion, and full of affection towards the major himself, earnestly entreating him, at the desire of Sir David and the rest of his family, to return to Gilmerton. Upon my observing that this letter was very foreign to the subject he had mentioned, he replied, "That letter is a sufficient proof of the truth I have told you, and I have no other proof." At this time the major appeared to me to be quite deranged in his mind. I told him that he seemed to be much indisposed, and pressed him to go to bed, to try to get some sleep, after his fatiguing journey, and also to remain with me at my sister's house, who lived in the neighbourhood of Port-Glasgow; but all this he positively refused to do, and said that he was obliged to return immediately to Berwick, where he proposed sleeping that night, and instantly set out, notwithstanding I used every argument in my power to dissuade him from his purpose. The next time the major appeared to me to be in a deranged state of mind, was in Dumbreck's hotel, in Edinburgh, four or five days before the death of the late Sir Francis Kinloch. One of the waiters having told me he was in the house I immediately went to him, between seven and eight o'clock in the evening; he was then going to dinner, and appeared to me to be totally depressed in his mind, and quite incoherent in what he said. I was obliged to ask him the same question two or three times before he would make me any answer, and then he used to start up as if something had alarmed him. He told me that he had been extremely ill indeed, ever since the death of his father, who had made what he (the major) considered a handsome provision for him, and with which he was perfectly satisfied; at this time he spoke of his brother Sir Francis with great affection. The major told me that he was obliged to set out early next morning for London, upon particular business. I remonstrated with him against undertaking such a long journey in his present state of health, and advised him to send for and consult some medical gentleman; I likewise told him that I intended setting out myself, in a few days, for Buxton, and pressed him much to wait for me, and that we could travel so far together; but he would not listen to anything I proposed, and set out next morning in a post chaise, with an intention, as he told me, to dine at Gilmerton on his way to London.

Did you think that the major's situation on this occasion proceeded from intoxication?—By no means. He called for a bottle of wine, and drank only a few glasses of it. Indeed, his situation made such an impression on my mind, and I was so much convinced of his deranged state, that when I went home I told my sister (who was well acquainted with the major) that I should not be surprised if he committed some rash action against himself.

When did you again see the major?—I went to the major the day after he was brought into Edinburgh gaol, at his own request, and found him as calm, rational, and collected, as I ever remembered him, and perfectly sensible of the deplorable situation he was then in. He said he had been much deranged in his judgment for a considerable time before the fatal accident befel his brother, and that he did not know he had a pistol in his hand till he heard the report. I called upon him two days afterwards, in company with Dr. James Home, and found him (as I thought) quite delirious and furious; and when we left him, I had some conversation about him with Dr. Home, who was of opinion that, if the major's fever continued much longer, it would be advisable to put the strait-waistcoat upon him. When I went in upon this occasion the major was walking rapidly about the room, which was very small, as if for a wager.

Lord Advocate.—You have told us that, when you saw the panel at Dumbreck's hotel, he was alarmed, and that you had to ask the same question two or three times over before he gave an answer. Now, when he did return an answer, was it a rational and distinct one?—It was generally pretty much so, but expressed with a degree of melancholy and wildness which I never observed before.

Mr. Hope [who became afterwards Lord President of the Court of Session], made a most eloquent address in favour of the prisoner. The exordium was as follows:—


My Lord Justice Clerk, and Gentlemen of the Jury.—I feel myself greatly agitated. I have waited with extreme impatience for the present moment, and now that it is come, I wish I may have either strength or recollection to give utterance to the multitude of ideas which crowd upon me. The subject really overcomes me, and I hardly know how or where to begin.

You have heard a very ingenious speech from the learned lord (the Lord Advocate), and I must in justice add, a very candid one; a speech

in point of candour just what I expected, and every way becoming his honourable mind ; indeed his candour seemed to be at variance with his duty and abilities, and evidently betrayed him into inconsistencies, which even his eloquence could not disguise. But, before proceeding to reply to him, or to give you my own observations on this case, there is one preliminary view of it which I cannot refrain from giving you, because it has made the strongest impression on myself ; it is indeed affecting beyond measure, and teaches how vain and fleeting are even those enjoyments here, which we are the best entitled to call our own.

Gentlemen, I desire to call to your remembrance the honourable testimony which you have heard to the prisoner's character prior to 1780, and to contrast it with the subsequent melancholy change. See him entering early into the army, the second son of an honourable house, himself possessed of an independent fortune, embracing the profession of a soldier, for glory, not for profit, and devoting himself to the service of his country only for his country's sake ; see him entering into that profession, of all respectable professions the most respectable, himself the most respected officer in the line. You heard the character which was given of him by those who knew him well, who have come from the extremities of the island, to which the summons of this court could not have reached them, voluntarily, to support a fellow soldier in distress, and who, by doing justice to his character for friendship, generosity, benevolence, humanity, and every social and amiable accomplishment, have, in the most decided manner proved their own title to share in the praises they bestowed. " Beloved and esteemed in his own regiment by both officers and men, respected by the whole line, and in every point one of the most amiable characters they ever knew," were the words of his companions. Noble and generous friends ! I know not whether to admire most, yourselves who give, or your now unhappy friend who deserves such testimony.

Such was Major Gordon, when in 1780 he sailed to the West Indies, to that malignant and accursed climate, which has been the grave of millions, and which seems to have been ceded to Europeans by the wrath of heaven, to be a scourge and punishment for the horrid barbarities they have acted there. Such was he, when he sailed, commanding a regiment of his brave countrymen, all flourishing like himself in youth, and health, and spirits. View now the dismal melancholy change : by heavens ! I cannot bear it. O God, thy ways are just, but sure they are inscrutable ! If virtue, honour, and humanity, ever deserved thy favour, or entitled



their possessors to success and prosperity in this life, as well as happiness hereafter, surely the prisoner would have been the object of thy care : but let me not blaspheme, thy purposes must be served, thy will be done.

Turn, then, gentlemen, to the sad reverse. View the prisoner now stretched on the bed of sickness and of frenzy ; nursed and attended by those friends who have here borne testimony in his favour, and whose friendship the danger of contagion could not deter from administering to his relief. View him, by their care, restored again to life, only to curse the care which had snatched him from the grave. View him now returned to Britain : alas ! how changed ; changed, not in reason only, but in his very nature ; the whole man absolutely lost, and the amiable and generous Gordon Kinloch become the sullen, morose, jealous, and troublesome being, which he has since occasionally existed. See him often a plague and affront to that family of which he was once the flower ; see him shunned and avoided as a pest by those very persons who once courted his company, and thought themselves honoured by his friendship : see him wandering from his father's house, coming he knows not whence, going he knows not where, but in all places an object of terror and aversion. View, at last, the concluding scene of this sad tragedy—his brother fallen by his hand—himself now answering for his murder ; think on this sad change, and let it make you serious ; think on the prisoner's fate, then think of the blessings which yourselves enjoy, and let it make you grateful.

But, gentlemen, mistake me not ; think not that I have thus appealed to your feelings because I have need of your compassion. I desire not mercy, unless you can give it me with justice ; I do not think I have occasion to throw the picture I have drawn into the scale ; though surely, if the scales were even, it would indeed turn the balance. I have dwelt on this subject, not so much for the prisoner's sake as for our own. It has taught me a lesson of humility, which I shall not easily forget, and which none of you perhaps may be the worse to learn. It may teach us all to acknowledge what all already know, that even our characters are not our own, and that our very virtues, as well as the faculties and powers of the body and mind, are subject to disease, to alteration and decay. It may teach us, too, how uncertain and worthless a reward is often human praise. At the other end of the island, parliament is now employed in erecting a monument to one great man, who, perhaps fortunately for

himself, died in that infernal climate ; while you are desired to doom to death and infamy one not less amiable, who unhappily survived it.

Mr. Hope thus concluded :—

I will not, gentlemen, dwell an instant on the case of Lord Ferrers. It agrees in no point with this, but that the word madness occurs in both. Lord Ferrers did not fail in proving that he had been occasionally deranged, but he failed totally in proving that he was deranged at the time, or rather it was clearly proved that he was in his perfect senses ; but we have not only proved previous derangement to no slight degree, but a derangement at the time, gradually increasing till it ended in a crisis of delirium. Lord Ferrers was proved to have acted from the most determined revenge, and to have laid his schemes in the most deliberate manner ; while previous malice in the prisoner here, though once attempted to be proved, is now expressly given up ; and as for deliberation, it is absurd to talk of it. In short, while justice and law exist, the cases of Lord Ferrers and of the prisoner will ever be regarded as in exact opposition and contradiction to each other.

I think I am now, gentlemen, drawing to a conclusion. I think I have marked the great and leading features of this case, to which it is proper for you to direct your attention ; many things I have no doubt omitted ; some, indeed, I have omitted by design, for I wished not to distract your attention from the leading circumstances of the case ; and, relying on the goodness of my cause, I wish you to retire before you are completely exhausted ; for, the sounder your judgment, the more certain my success. I am, indeed, confident. It is not usual for a counsel to deliver his own opinion, nor, perhaps, is he entitled. But the example has been set me, and perhaps even my opinion may carry some weight and authority along with it ; perhaps also I owe it in justice to the prisoner, for having once listened to the calumnies against him ; with truth, then, and pleasure I can say, that the very first day's inquiry which I made into his case effaced the prejudices I had conceived. My opinion has every day grown stronger in his favour ; and now, laying my hand upon my heart, and as I hope for mercy at the throne of heaven, I can say that, in my conscience, I believe him innocent.

After the Lord Justice Clerk had briefly summed up, the jury returned a written verdict, to the effect, that the prisoner was guilty of the deed, but that he did it while insane, and deprived of his reason ; upon which the judgment of the court was, that Sir Archibald Gordon Kinloch

was not an object of punishment, but that, on account of his dangerous insanity, he should be detained in the Tolbooth of Edinburgh, during the remainder of his life, or until some friend, under a caution of ten thousand pounds, would undertake to keep him in sure and safe custody to the end of his days.

Dr. William Farquharson, a Member of the Royal College of Surgeons in Edinburgh, having entered into the requisite security, the unfortunate Sir Archibald was removed from prison and delivered to his care on the 17th July, 1795. Sir Archibald died, no doubt in confinement, in 1800, when the title devolved on his next surviving brother, Sir Alexander Gordon, who died in 1813, and was father of the present baronet, Sir David Kinloch, of Gilmerton.



## THE DEATH OF MR. ERRINGTON, OF THE GRAYS.

GEORGE ERRINGTON, Esq., the victim of this startling tale of jealousy, was the son of a gentleman of the same name, who was Sheriff of London in 1760. He himself was a barrister of the Middle Temple, and a gentleman of large landed and personal property. He resided at his seat, Grays, in Essex, and was in his thirty-ninth year when he met with his death. It appeared that Mr. Errington had become well known from the circumstance of his having been divorced from his wife, a few years before the melancholy event which we are about to relate. About three years after the termination of the proceedings in the Ecclesiastical Courts, he became acquainted with Miss Broadric, a young lady possessed of considerable accomplishments, and in personal charms superior to many. Miss Broadric before this had lived with a Captain Robinson, but it appears that being addressed by Mr. Errington with great solicitude, she consented to reside with him under his protection. A mutual attachment sprung up; but after a lapse of three years, during which they lived together with every appearance of domestic felicity, Mr. Errington bestowed his affections and his hand on a lady of respectability in the neighbourhood, acquainting Miss Broadric that he could see her no more. On her quitting him, he made what he conceived to be a suitable provision for her future wants, and she retired, apparently deeply grieved at the unfortunate change which had taken place in the feelings of her late protector. After the first agonies of her grief, Miss Broadric sent the following remonstrance :—

“ Sept. 11, 1794.

“ DEAR E.—That you have betrayed and abandoned the most affectionate heart that ever warmed a human bosom, cannot be denied by any

person who is in the least acquainted with me. Wretched and miserable as I have been since you left me, there is still a method remaining that would suspend, for a time, the melancholy suffering and distress which I labour under at this moment; and still, inhuman as thou art, I am half persuaded, when I tell you the power is in your hands, that you will not withhold it from me. What I allude to is, the permission of seeing you once more, and perhaps, for the last time. If you consider that the request comes from a woman you once flattered into a belief of her being the sole possessor of your love, you may not perhaps think it unreasonable. Recollect, however, E., ere you send a refusal, that the roaring of the tempest, and the lightnings from heaven, are not more terrible than the rage and vengeance of a disappointed woman. Hitherto, you can only answer for the weakness and frailty of my nature. There is a further knowledge of my disposition you must have if you do not grant me the favour demanded. I wish it to come voluntarily from yourself, or else I will force it from you. Believe me in that case I would seek you in the farthest corner of the globe—rush into your presence—and, with the same rapture that nerved the arm of Charlotte Cordet, when she assassinated the monster Marratt, would I put an end to the existence of a man who is the author of all the agonies and care that at present oppress the heart of

ANN BROADRIC."

The desired interview was refused; but she still persisted, by letters, to move him to grant her this last request; but finding him inexorable, she wrote to him, "That if nothing could induce him to do her this act of common justice, he must prepare himself for the fatal alternative, as she was determined *that he should not long survive his infidelity!*"

After a lapse of a month, receiving no answer whatever, she dressed herself elegantly, early on Friday morning, May 15th, 1795, went to the Three Nuns inn, in Whitechapel, and took a place in the Southend coach, which passed very near Mr. Errington's house, at Grays. She got out at the avenue gate, and, in her way, was recognised by Mr. Errington, who told his wife that that tormenting woman, Broadric, was coming; but that he should soon get rid of her, if she, Mrs. Errington, would retire a few minutes. Mrs. Errington, however, did not consent to this, but prevailed upon her husband to go up stairs into the drawing-room, and leave the interview to her management. Miss Broadric being shewn into the house, asked for Mr. Errington; but was told by Mrs.

Errington that he was not at home. "I am not to be so satisfied, Madam," replied Miss Broadric. "I know the ways of this house unfortunately too well, and, therefore, with your leave, I'll search for him!" On this, she rushed into the drawing-room, and finding him there, she drew a pistol, with a new hagged flint, from her pocket, and presenting it at his left side, directed to his heart, exclaimed, "I am come, Errington, to perform my dreadful promise!" and instantly pulled the trigger. Surprised at his not falling, she said, "Good God! I fear I have not despatched you! But come, deliver me into the hands of justice!"

Mrs. Errington rushed into the room, and seeing her husband bleeding, fainted away. Mr. Errington now remonstrated with Broadric, and asked her, if he had ever deserved this at her hands, after the care he had taken to settle her so comfortably in the world? She gave no other answer than a melancholy shake of her head.

A neighbouring surgeon, on being called in, found that the ball had penetrated at the lowest rib, cut the ribs asunder, and then passed round the back, and lodged under the shoulder bone, from whence every effort was made to extract it, but in vain.

Mr. Button, a magistrate, came, who took the examination of Mr. Errington, after his wound was dressed. He asked Miss Broadric what could induce her to commit such an act of extreme violence? Her answer was, that she was determined that neither Mr. Errington nor herself should long outlive her lost peace of mind.

Mr. Errington entreated of the magistrate not to detain her in custody, but to let her depart, as he was sure he should do well. But this request Miss Broadric refused to accept, or the magistrate to grant. Her commitment being made out, she was conveyed that evening to Chelmsford gaol, where she remained composed till she heard of Mr. Errington's death, when she burst into a flood of tears, and lamented bitterly that she had been obliged to be the cause of his death. The coroner's inquest sat on Tuesday, the 19th of May, and brought in their verdict of murder.

At the assizes, on Friday, July 17th, 1795, Ann Broadric was conveyed to the shire-hall, Chelmsford; she was conducted into the dock in the criminal court, attended by three ladies and her apothecary. She was dressed in mourning, without powder; and after the first perturbations were over, occasioned by the concourse of surrounding spec-

tators, she sat down on a chair prepared for her, and was tolerably composed, except at intervals, when she evinced violent agitation. Whilst the indictment was reading, she paid marked attention to it ; and on the words, " that on the breast of the said G. Errington, she did wilfully and feloniously inflict one mortal wound," &c., she exclaimed, " Oh, my great God ! " and burst into a torrent of tears.

The prosecution for the crown was opened by Mr. Garrow [afterwards Sir John Garrow, a Baron of the Exchequer], who demonstrated the painful execution of his office by the humane and affecting exordium with which he addressed the jury preparatory to the statement of the evidence he was instructed to adduce.

George Bailey being sworn, said—He was servant to the deceased, Mr. Errington ; saw Miss Broadric come into the kitchen on the 18th of May last ; did not know her ; she asked whether Mr. Errington was at home ? he answered, yes ; and desired the gardener to shew the lady into the parlour, while he put on his shoes, and went up to inform his master, then in the drawing-room ; that he saw Mrs. Errington and the lady meet at the parlour door. [Here Miss Broadric shook her head and groaned deeply.] He perceived that the ladies were strangers to each other. Miss Broadric asked Mrs. Errington if Mr. Errington was to be spoken with ? She answered, " Yes, ma'am ; pray walk up stairs." His mistress went up first ; he returned to the kitchen, and in the space of a minute he heard the report of a pistol, the shrieks of his mistress, and also his master cry out and groan ! He ran up stairs, and passing some workmen, desired them to go with him, as something dreadful had happened. On entering the drawing-room, he beheld his master all over blood, and leaning, with his left hand on his right breast, who exclaimed, " Oh God ! I am shot ! I am murdered ! " Mrs. Errington instantly ordered him to take that woman into custody, for she had murdered her husband. On this Miss Broadric threw a pistol out of her left hand on the carpet, and laughed, crying out, " Here, take me, hang me, and do what you will with me ; I don't care now ! " He told the workmen to take care of the prisoner till he came back : he then ran to the stable, took a horse, and rode for Mr. Childers, the surgeon, about a mile off ; desired him to mount the horse, and make haste to his master, who was shot ; he followed soon after with two constables, when he found the doctor and Mrs. Errington with his master. Miss Broadric he saw afterwards in the parlour below : that on seeing her right hand in her pocket,

he told the constable he thought she had another pistol in her pocket : that the constable went behind her, and took hold of both her arms, when she said, "What are you going to do?" He replied, "Not to hurt you in the least, ma'am, but it is our duty to put these handcuffs upon you;" which they did. She rejoined, "Let me put my hand in my pocket first." The constable answered, "No!" She said, "I want to give you something." "Some other time," replied the other. The witness then asked her whether she had not another pistol. She answered, "I have!" and in a lower tone of voice said to him, "This I intended for myself!" He then sent for a woman servant, and desired her to search her; which she did, and immediately drew another pistol from her pocket.

John Eves lived at the Bull Inn, Whitechapel. Miss Broadric came to him about the 11th of May, and gave him a letter to carry to Mr. Errington, which he delivered to him on the 13th, at Grays, who asked him whether it did not come from Miss Broadric? He replied it did. Mr. Errington then bade him take it back, as he should see her at the fair; he took the letter to her again unopened the next day. This letter was as follows :—

"DEAR SIR,—As I intend going to Southend on Wednesday, I wish to speak a few words to you on money affairs, as I have received no answer to the letter from Mr. ——— (Mr. Errington's solicitor). I fear you are deceived in the person you entrust. I wish you would meet me at the Dog and Partridge, at Stifford, as I have not had the money you promised me I should receive."

Here, after proof of the death, the evidence for the Crown was closed, and several persons were called in, who clearly proved the prisoner's insanity.

The Lord Chief Baron (Sir Alexander Macdonald), before he summed up the evidence, called the attention of the Jury to the particular plea of insanity, on which the defence of the prisoner had been rested, as no denial had been set up against the perpetration of the deed, of which, indeed, there had been given the fullest and clearest evidence. The law certainly required that the will should accompany the act, to constitute a felonious murder. The defence in the present case was, that the prisoner was incapable of lending her will to the perpetration of the crime with which she stood charged. On the whole, if the Jury thought the latent

seeds of derangement, after a convulsive struggle of six months, had been called forth on this horrible occasion, so as to overwhelm the senses of the unhappy prisoner, they were bound in conscience to acquit her. If, on the other hand, they believed that it was the preparatory pangs of a mind intent on gratifying its revenge by the death of its object, they must find her guilty ; but they scarcely need be told, that, should a doubt remain on their minds, common charity required that the balance should turn in the prisoner's favour.

The Jury consulted about two minutes, and then gave their verdict—*Not Guilty.*

The Judges directed that Miss Broadric should be examined before two magistrates, that she might be safely removed, under their order, to the place of her settlement, with a particular recommendation annexed thereto, that she might be treated with all possible care.

At the trial, on the 26th June, 1800, of James Hatfield, a lunatic, for shooting at George III., Mr., afterwards Lord, Erskine, who defended the prisoner, thus alluded to the trial of Miss Broadric :—" There was another instance of this description in the case of a most unhappy woman, who was tried in Essex for the murder of Mr. Errington, who had abandoned her and the children she had borne to him. It must be a consolation to those who prosecuted her, that she was acquitted, as she is at this time in a most undoubted and deplorable state of insanity ; but I confess, if I had been upon the jury who tried her, I should have entertained great doubts and difficulties : for although the unhappy woman had before exhibited strong marks of insanity, arising from grief and disappointment, yet she acted upon facts and circumstances which had an existence, and which were calculated, upon the ordinary principles of human action, to produce the most violent resentment. Mr. Errington having just cast her off, and married another woman, her jealousy was excited to such a pitch as occasionally to overpower her understanding ; but when she went to Mr. Errington's house, where she shot him, she went with the express and deliberate purpose of shooting him. That fact was unquestionable ; she went with a resentment long rankling in her bosom, based on an existing foundation. She did not act under a delusion, that he had deserted her when he had not, but took revenge upon him for an actual desertion ; but still the jury, in the humane consideration of her sufferings, pronounced the insanity to be predomi-

nant over resentment, and they acquitted her. But let me suppose (which would liken it to the case before us), that she had never lived with Mr. Errington; that she had never had children by him; and, consequently, that he neither had, nor could possibly have deserted or injured her. Let me suppose, in short, that she had never seen him in her life, but that her resentment had been founded on the morbid delusion that Mr. Errington, who had never seen her, had been the author of all her wrongs and sorrows; and that under that diseased impression she had shot him. If that had been the case, gentlemen, she would have been acquitted upon the opening, and no judge would have sat to try such a cause: the act itself would have been decisively characteristic of madness, because being founded upon nothing existing, it could not have proceeded from malice, which the law requires to be charged and proved, in every case of murder, as the foundation of a conviction."

## THE FORCIBLE CAPTION OF MRS. LEE.

THE lady, who was the subject of this extraordinary outrage, was the illegitimate daughter of Francis Dashwood, Lord le Despenser, and before her marriage was called Rachael Fanny Antonina Dashwood: she was born in 1774. Lord le Despenser, her father, died in 1781, when she was seven years of age. He also left a son by the same mother, and shared between them property to the amount of £70,000. Miss Dashwood was put under the care of trustees, and became a ward of Chancery. Her guardians placed her with Mrs. Gordon, who kept a school at Kensington. This Mrs. Gordon (herself the daughter of John Wallop Viscount Lymington, and sister of the second Earl of Portsmouth) was married in 1770 to John, the third Earl of Aboyne's third son, the Hon. Lockhart Gordon, Judge-Advocate-General of Bengal, who died in 1788, leaving, beside a daughter, two sons—Lockhart, born in 1775, and Loudon, born in 1780. The principals in the following nefarious transaction were these two sons. Miss Dashwood first became acquainted with them, when they were at home with their mother for the holidays. In 1794, before she was of age, she was induced to go off with Matthew Allen Lee, Esq., to Scotland, and was married to him at Haddington. This having been done without the consent of the guardians, when the married couple came to London, Mr. Lee was arrested by order of the Chancellor, and confined in the King's Bench, till such time as the Court of Chancery could arrange the disposition of his wife's property. Early in the year 1796, the business came to a settlement, and the Chancellor decreed that half her property should be settled upon her, to be disposed of as she pleased by will. This property amounted to the annual sum of £1,200. Some disagreeable circumstances arising, she was separated from her husband the latter end of the same year, after they had lived together only a few months. Mrs. Lee,



being personally independent, took a house in Bolton-row, Piccadilly, and kept up an establishment of her own. In this place she lived at the latter end of 1803. From the time she left Kensington till near upon 1804 she had not seen or heard of the Gordons. Loudon Gordon had been many years in the West Indies, and did not arrive in London till September 1803; when he went to lodge with his brother Lockhart, who had lived in Alsop's Buildings, New-road, about three years, and who was then a clergyman. It was in the latter end of December, 1803, that her acquaintance was renewed with Loudon Gordon, by means of Mr. Blackett, an apothecary, who attended her for some years. She had not seen Lockhart during the whole three years he resided in London. Mrs. Lee was of a very retired disposition, engaged in little pleasure, and received very little company. She was of a studious habit, and spent much of her time in reading and writing; her seclusion from society arose from a natural habit, which many people term a nervous disposition, to which she was inclined. From the end of December to the 12th of January, 1804, Loudon called three or four times, but did not see her every time. During this interval several letters passed, in which she desired him to desist from all ideas of anything more than a common friendship. On the 12th of January, Loudon called on Mrs. Lee in the morning, and then she told him to bring his brother Lockhart the next time he came; and Sunday being fixed upon, it was settled they should come on that day. In the course of the evening of the 12th of January, Loudon Gordon called again, and left a letter written by himself, and also one from his brother Lockhart, in a separate cover.

On the Sunday in question, the 15th January, 1804, Mrs. Lee was carried away by the Gordons, and for that offence they were tried at the Oxford Lent assizes of the same year.

Mr. Justice Lawrence presided. Mr. Mills conducted the prosecution, and Mr. Abbott (afterwards Lord Tenterden, Chief-Justice of the King's Bench) appeared for the defence. The indictment against the prisoners, Loudon Gordon and the Rev. Lockhart Gordon, was under the 3rd Henry VII., chap. 2, which made forcible abduction a capital crime. The facts of the case as they came out before the court, and the curious point of law which favoured the prisoners, are very lucidly stated in the report of the trial in a third edition of Mr. Russell's work upon Crimes, edited by a very learned and able writer on criminal jurisprudence, Mr. C. S. Greaves, Q.C. The following account is mainly taken from that report.

The evidence adduced was to this effect :—

Mrs. Lee stated, that the conversation of the Gordons upon their visits, just prior to the abduction, were chiefly upon books, as her habits were studious ; but that upon Loudon Gordon taking leave after his first visit, he saluted her ; and that on his second visit she warned him against entertaining any attachment for her, which she thought a likely thing to happen, as he was a young man ; and that, upon her giving this caution, he said he had an attachment, and that his happiness was in her hands. By way of changing the conversation, she then read to him an account of a dream which she had had, and requested him to interpret it, which he afterwards did, by sending to her an interpretation, which was clever and ingenious. The third time he called he proposed a tour into Wales, which she did not agree to, either then or at any time ; but she admitted that she did not give such an absolute refusal as to prevent him mentioning the subject again ; and that, in a letter which he wrote to her, about the 12th of January (and which contained strong declarations of attachment), he alluded to the tour ; but she expressly stated, that she did not know of any plan for going with him anywhere, nor ever consented to any such plan ; though, when it was mentioned by him on the same day on which she received his letter, she said, “ We will talk of it.” A letter from Lockhart Gordon was received by her, together with that from Loudon, in which he also mentioned the proposed tour as likely to conduce to her happiness, described himself as having a head to conceive, a heart to feel, and a hand to execute whatever might be for her advantage ; and declared that if his brother ever deceived her, he would blow his brains out. A short time before Sunday, the 15th of January, Mrs. Lee invited Loudon Gordon to dine with her on that day, and requested that he would bring his brother Lockhart with him ; and they came accordingly. This was the time at which the offence was alleged to have been committed.

According to Mrs. Lee’s account of the material transactions at that time, it appeared that after dinner she said to Lockhart Gordon, “ What do you think of the extraordinary plan your brother has proposed ? ” To which he replied, “ If he loves you, and you love him, I think it will tend to your mutual happiness : you will gain two friends.” That she did not recollect anything more being said upon the subject till Lockhart Gordon pulled out his watch, said it was near seven o’clock, and that the chaise would soon be there ; and said further, “ You must go with Loudon to-night.” She thought this a joke, as no mention had been pre-

viously made of leaving London, or of any chaise ; and she knew of no preparations having been made for her leaving London. About this time Loudon Gordon came towards Mrs. Lee with a ring, and attempted to put it on her finger, but she drew away her hand, and the ring was left upon the table. She then attempted to go up stairs, but Lockhart Gordon said she should not, and placed himself against the door ; and either at that time, or soon afterwards, he produced a pistol ; she, however after having rung the bell violently, got out at the door, and went up stairs, where she said to her female servant, " There is a plan to take me out of my house ; they are armed with pistols ; say no more, but watch." She described herself as having felt quite panic-struck at that time. Soon afterwards the prisoners came up stairs, and Lockhart Gordon said, " I am determined you shall go." This was not said in a threatening manner ; but soon afterwards, upon her saying to him, " What right have you to force me out of my house ?" he said, " I am desperate," and looked as if he was so. Mrs. Lee described herself as then getting into a very wretched and confused state of mind, not absolutely stupid, but unable to recollect what passed. But it appeared from the evidence of her servants, that Loudon Gordon first came down stairs and sent the footman to call a coach, who went accordingly ; and the only servants then in the house were two females ; that Loudon returned up stairs, when a scuffle was heard almost immediately, and Mrs. Lee called out, " I am determined not to go out of my own house ;" to which Lockhart Gordon replied, " I am desperate, Mrs. Lee." The female servants went immediately up stairs, and found Lockhart pushing Mrs. Lee out of the drawing-room, with his arm round her waist, and Loudon near them. Mrs. Lee was in a thin muslin dress, with a small crape handkerchief about her head, as she was dressed for dinner, and without any hat or bonnet. One of the servants put her arm round Mrs. Lee's waist to drag her away, but Lockhart Gordon produced a pistol, and swore that he would shoot the servant, by which she was so much alarmed that she desisted. The other servant then took Mrs. Lee by the hand, but quitted it upon Lockhart Gordon threatening also to shoot her, and presenting a pistol. Lockhart Gordon then laid hold of one of the servants, and both of them being so much alarmed as to make no further resistance, Loudon Gordon put his arm round Mrs. Lee's waist, and took her down stairs, and out at the street door ; when Lockhart Gordon immediately followed. It appeared by other witnesses, that a post-chaise, which the prisoners had

ordered in the course of the morning, was at that time waiting at the end of Bolton-row ; that Mrs. Lee was taken to it by Loudon Gordon ; that Lockhart Gordon followed ; and that it drove off immediately on the road to Uxbridge. Mrs. Lee's account was, that though she remembered but imperfectly what took place at the time she was taken away, she was certain that she went from the house against her will, but that no manual force was used to get her into the chaise. She described herself in a state of partial stupefaction ; and several of the witnesses spoke of her as being of a very nervous frame, easily agitated, and subject to depression of spirits, to such an extent as to be occasionally in a state of great mental misery.

As soon as Mrs. Lee and the two prisoners had got into the chaise, it drove off at a smart pace towards Uxbridge, Mrs. Lee sitting in the middle, between the prisoners ; and it appeared that, after changing horses at Uxbridge and at Wycombe, the party arrived at Tetsworth, about twelve miles from Oxford, between one and two o'clock in the morning. Mrs. Lee stated that she frequently remonstrated with the prisoners in the course of the journey ; and particularly told Lockhart Gordon that it was "a most infernal measure, and a breach of hospitality ;" and repeatedly asked him for a chaise to take her back to London, making the application principally to him, because he seemed to have taken the lead in the whole business. But it appears, as well from her own admissions as from the evidence of the postboys, that she never called for assistance at the inns, turnpike-gates, or other places ; and one of the postboys stated that, at Wycombe, one of the prisoners asked her whether she would stay there or go on to Tetsworth, or Oxford, and that her answer was, "I don't care." Mrs. Lee also admitted that a ring was put upon her finger in the course of the journey by Loudon Gordon ; and that during the journey, but whether before they got to Uxbridge or afterwards, she could not tell, she took a steel necklace, with a camphire bag attached to it, from her neck, and threw it out of the chaise, saying, "That was my charm ; I have now no occasion for it." She said that she used the word "charm" as alluding to the supposed medical property of camphire in quieting the nerves and calming the passions, and that she was in the habit of wearing it as a sedative ; that at the time she used the expression, she gave herself up, but that she afterwards expostulated. And she also admitted, that during the journey she made some inquiries concerning Loudon Gordon's

health. It then appeared from Mrs. Lee's further evidence that at the inn at Tetsworth, where they supped and remained till morning, she made no longer any resistance, giving as her reason that she was under the impression that her life was in danger from Lockhart Gordon, and she was apprehensive of some serious scuffle at the inn, in which lives might be lost. These were the material facts of the case, with the addition that it was proved by the woman with whom the prisoners lodged in London, and that previous to the time when this transaction took place, Lockhart Gordon was pressed for money, and backward in his payments, and that Loudon Gordon had admitted to her that he was in distressed circumstances.

The learned counsel for the prisoners was proceeding in his cross-examination of Mrs. Lee, to question her as to her religious principles, and she had just admitted that she seldom went to any place of worship, and was inclined to doubt the Christian religion, when Mr. Justice Lawrence, after having inquired of the counsel for the prosecution whether they had any further evidence to offer of force in the county of Oxford, and been told by them that they had not, said that he was of opinion that the case could not proceed any further. The learned Judge then addressed himself to the jury, and told them, that in order to constitute the offence with which the prisoners were charged, there must be a forcible taking, and a continuance of that force, into the county where the crime is concluded, and where the indictment is preferred. That in the present case, though there appeared clearly to have been force used for the purpose of taking prosecutrix from her house, yet it appeared also that in the course of the journey she consented, as she did not ask for assistance at the inns, turnpike-gates, &c., where she had opportunities ; that, as she was unable to fix times or places with any precision, this consent probably took place before the parties came into the county of Oxford, and that they must, therefore, acquit the prisoners. His Lordship, however, concluded by commenting on the conduct of the Gordons, which he declared to be shameful in the extreme, particularly that of Lockhart Gordon, whose duty as a clergyman was to instruct and guide, not to betray and outrage, the weak and defenceless.

The jury returned a verdict according to the Judge's direction, and the prisoners were led from the bar. Lockhart was discharged, but Loudon was detained on an action of debt.

The Annual Register for the year when this trial took place, furnishes

an additional painful incident in the account of another victim of the misconduct of Lockhart Gordon. It reports as follows:—

“Died, on the 1st of May, 1804, of a broken heart, sincerely regretted by all who knew her, Mrs. Gordon, wife of the Rev. Lockhart Gordon. On the 9th her remains were interred (at the expense of a few charitably disposed people) in Holy Trinity Churchyard, Dorchester. The history of this unfortunate lady affords sufficient matter to rouse in the sympathetic mind a spirit of indignation against the cruel authors of her sufferings. Suffice it only to say, that she was a branch of a very respectable and opulent family in Shropshire, and that by her union (which took place about two years ago, at St. Mary-le-Bone church, as appears from a copy of a register found in her possession), she incurred the displeasure of all her friends, and was renounced by them for ever; and, notwithstanding her personal attractions, sensibility, and engaging manners, she shortly after arrived at Dorchester unprotected, where she took an obscure lodging, living in a pitiable state, but supporting the character of a true Christian, till the idea of being thus abandoned, and the shock she received by the sad recent transaction in Oxfordshire (the trial of her husband), preyed so forcibly on her delicate feelings, that she fell a victim to inconsolable grief in her twenty-first year.”

## THE DUEL BETWEEN COLONEL MONTGOMERY AND CAPTAIN MACNAMARA.

**COLONEL ROBERT MONTGOMERY**, who fell in this deplorable duel, was a scion of the old and honourable family of Montgomery of Macbeth, or Magbie Hill, in the County of Peebles. His father, Sir William Montgomery, was created a Baronet the 28th May, 1774. The Colonel was the second surviving son ; one of his sisters was Lady Mountjoy, mother of the late Earl of Blessington ; another was Marchioness Townshend ; and a third is the present Mrs. Byng, of Wrotham Park, Middlesex. Colonel Montgomery himself was a gallant and distinguished officer in the British service : he had risen to be Colonel of the 9th Foot through his personal merit, having displayed on various occasions much skilful and chivalrous courage. He was a remarkably handsome and fashionable man, and was on intimate terms of friendship with the Duke of York, and the Prince of Wales who is said to have wept at the news of his death. His opponent, Captain Macnamara, was an officer of distinction in the Royal Navy : he had acted gallantly in two or three actions as Commander of the *Cerberus* frigate. At the time of the duel he had just returned from the West Indies, his ship having but two months before been paid off at Chatham. He was about thirty-six years of age, was a strong, bold, active man, and had already been known as having been engaged in affairs of honor.

Colonel Montgomery and Captain Macnamara fought upon Primrose Hill ; they both were wounded, the former died, and the latter was tried for manslaughter. The facts fully appear in the report of the trial, which took place on the 22nd of April, 1803, at the Old Bailey, before Mr. Justice John Heath.

Mr. Knapp, who was counsel for the Crown, thus opened the charge :—  
“ Gentlemen of the Jury, the only question you have to try is, whether

the gentleman who is stated in the inquisition to have lost his life, lost it by the act of the prisoner; lost it in a rencontre, which took place between them at Primrose Hill; and if you are of opinion that the prisoner was the cause of the death of the deceased, in consequence of the pistol he fired at him in that rencontre, there can be no question but your verdict must find him guilty of manslaughter. Both the prisoner at the bar, and the gentleman who has lost his life, are persons most respectably connected. The prisoner is a gentleman of acknowledged bravery in the service of his country, and eminent for his good qualities. The deceased was a man who deserved the affection and regard of every one who knew him."

The learned Counsel shortly stated the facts: he adverted to the origin of the quarrel between the prisoner and the deceased; their subsequent meeting at Primrose Hill, attended by their seconds and surgeon, and the fatal result of that meeting.

The following witnesses were then called:—

William Sloane, Esq., sworn.—I was in Hyde-park on Wednesday, the 6th of April, between the hours of four and five in the afternoon. I was on horseback, in company with Colonel Montgomery (the deceased) and my brother, Stephen Sloane. There was a Newfoundland dog following Colonel Montgomery; there was another dog of the same species following some gentlemen who were also on horseback; we were in that part of Hyde-park between the bridge and the barrier; the dogs begun fighting; Colonel Montgomery turned round and jumped off his horse to separate them: they were separated; I heard Colonel Montgomery call out—"Whose dog is this?" Captain Macnamara answered, "It is my dog;" Colonel Montgomery said, "If you do not call your dog off I shall knock him down." Captain Macnamara replied, "Have you the arrogance to say you will knock my dog down?" Colonel Montgomery said, "I certainly shall, if he falls on my dog." About this time Lord Burghersh came up, and some further conversation passed. I heard the word arrogance made use of several times: Captain Macnamara made use of it; we all proceeded to Piccadilly; Colonel Montgomery and Captain Macnamara gave their names to each other. The prisoner said, he was Captain Macnamara of the Royal Navy; Colonel Montgomery said, "It is not my intention to quarrel with you, but if your dog falls on mine, I shall knock him down." I took leave of Colonel Montgomery at the top of St. James's-street, with the intention of going home.



I saw Mr. Macnamara's party turning back to go down St. James's-street : at that time I had first turned up Bond-street, but returned, and again joined Colonel Montgomery, who went down St. James's-street, with my brother ; I afterwards saw Mr. Macnamara in Jermyn-street. Colonel Montgomery had proceeded as far as St. James's Church ; they were about thirty yards from the church, when a person, I believe Captain Barry, went from Mr. Macnamara to Colonel Montgomery ; I did not see him return again. On his cross-examination he said, " I saw the dogs begin to fight ; there was no reason for supposing the dogs were set on. Captain Macnamara was dressed as a gentleman, and had the appearance of one, and there could be no reason for supposing he set his dog on the other. Colonel Montgomery said, if he did not take his dog off he would knock him down ; he did not say it in the gentlest manner, as gentlemen are accustomed to speak to each other : he said, if Captain Macnamara was offended at this expression he knew where to find him ; he said this subsequent to the time when he knew Captain Macnamara was an officer of the Royal Navy."

Stephen Sloane, Esq., stated that he was also in Hyde-park when this affair commenced ; he saw the dogs fighting, and heard the threats of the deceased. Captain Macnamara rode up and said, " If you knock my dog down you must knock me down afterwards." Colonel Montgomery replied, " This public place is not proper for the adjustment of a dispute ; my name is Colonel Montgomery, you know where to find me." He added, Captain Macnamara could not suppose he meant offence by desiring him to call off his dog, or by saying he would knock him down. Captain Macnamara said he did not feel himself offended at that ; but that if Colonel Montgomery did say anything that was intended to affront him, he would take it up with the greatest eagerness ; I recollect Captain Macnamara using the word "arrogant" several times. The rest of the witness's evidence in chief corroborated the statement of the former witness.

Lord Burghersh (now Earl of Westmoreland) said, he was not present at the first dispute about the dogs ; he came up afterwards, and heard Captain Macnamara say, that the way in which Colonel Montgomery had desired him to call off his dog was arrogant, and not in language fit to be used by one gentleman towards another. Colonel Montgomery said, " Do you feel yourself injured ?" Captain Macnamara replied, " No ; not from what you have said ; but if you say anything that shall affront

me, I will take it up as soon as any man in England." Colonel Montgomery said, "It is not my intention to have any quarrel with you, but I shall adhere to what I said; and if your dog attacks mine, I will knock him down." Captain Macnamara said he would as soon revenge an insult as any man, and would fight Colonel Montgomery as well as any other man who offered him an injury. Captain Macnamara was shaking his stick, but it appeared to be an involuntary action, the consequence of his passion, and not intended as an insult.

James Harding, vintner, Jermyn-street.—I was at Chalk Farm on the Wednesday, at half-past six; I observed the party, Captain Macnamara, Colonel Montgomery, and three other gentlemen, ascending Primrose Hill. One of the party (Captain Barry) desired the servant to bring a case out of the chaise; this opened my eyes to the business. I stood about fifty yards distant from them; I saw Sir W. Keir and Captain Barry conversing together, and preparing the pistols; one was discharged to see whether they were in good condition; the parties separated to about six yards; Colonel Montgomery fired, and Captain Macnamara fired; they stood face to face; both fired at the same time; Colonel Montgomery fell; Captain Macnamara did not. I went up. Colonel Montgomery was extended on the ground, and, shortly after, Mr. Heaviside opened his waistcoat, and looked at his wound; it was on the right side; Mr. Heaviside administered relief to him, and then went to Captain Macnamara. I think he said he was wounded, and that he must bleed him. I assisted in carrying Colonel Montgomery; his eyes were fixed, and he was groaning; I saw the corpse afterwards on a bed in Chalk Farm.

The prisoner was now called upon for his defence. He entreated the Court to indulge him with the permission of addressing the jury sitting, as he felt much pain and inconvenience from his wound while standing. His request was instantly complied with, and he delivered himself in these terms, but in so low and tremulous a tone as scarcely to be heard:—

"Gentlemen of the Jury,—I appear before you with the consolation that my character has already been freed by the verdict of a Grand Jury, from the shocking imputation of murder; and that although the evidence against me was laid before them, without any explanation or evidence of the sensations which brought me into my present unhappy situation, they made their own impression; and no charge of criminal homicide was

found against me I was delivered at once from the whole effect of the indictment. I therefore now stand before you upon the inquisition only, taken before the coroner, upon the view of the body, under circumstances extremely affecting to the minds of those who were to deliberate on the transaction, and without the opportunity, which the benignity of the law affords me at this moment, of repelling that inference of even *sudden* resentment against the deceased, which is the foundation of this inquest of manslaughter.

“ The origin of the difference, as you see it in the evidence, was insignificant: the heat of two persons, each defending an animal under his protection, was natural, and could not have led to any serious consequences. It was not the deceased's defending his own dog, or his threatening to destroy mine, that led to the fatal catastrophe: it was the defiance alone which most unhappily accompanied what was said: for words receive their interpretation from the avowed intention of the speaker. The offence was forced upon me by the declaration, that he invited me to be offended, and challenged me to vindicate the offence by calling upon him for satisfaction. ‘ If you are offended with what has passed, you know where to find me.’ These words, unfortunately repeated and reiterated, have, over and over again, been considered by criminal courts of justice as sufficient to support an indictment for a challenge. These judgments of courts are founded upon the universal understandings and feeling of mankind; and common candour must admit, that an officer, however desirous to avoid a quarrel, cannot refuse to understand what even the grave judges of the law must interpret as a provocation and a defiance. I declare, therefore, most solemnly, that I went into the field from no resentment against the deceased: nothing, indeed, but insanity could have led me to expose my own life to such imminent peril, under the impulse of passion, from so inadequate a cause as the evidence before you exhibits, when separated from the defiance which was the fatal source of mischief; and, I could well have overlooked that too, if the world, in its present state, could have overlooked it also. I went into the field, therefore, with no determination or desire to take the life of my opponent, or to expose my own. I went there in hopes of receiving some soothing satisfaction for what would otherwise have exposed me in the general feelings and opinions of the world. The deceased was a man of popular manners, as I have heard, and with a very general acquaintance. I, on the other hand, was in a manner a stranger in this great town, having

been devoted, from my infancy, to the duties of my profession in distant seas. If, under these circumstances, words, which the deceased intended to be offensive, and which he repeatedly invited to be resented, had been passed by and submitted to, they would have passed from mouth to mouth—have been even exaggerated at every repetition, and my honour must have been lost.

“Gentlemen, I am a captain in the British navy. My character you can only hear from others ; but to maintain any character, in that station, I must be respected. When called upon to lead others into honourable dangers, I must not be supposed to be a man who had sought safety by submitting to what custom has taught others to consider as a disgrace. I am not presuming to urge anything against the laws of God, or of this land. I know that, in the eye of religion and reason, obedience to the law, though against the general feelings of the world, is the first duty, and ought to be the rule of action : but, in putting a construction upon my motives, so as to ascertain the quality of my actions, you will make allowance for my situation. It is impossible to define in terms the proper feelings of a gentleman, but their existence has supported this happy country for many ages, and she might perish if they were lost. Gentlemen, I will detain you no longer ; I will bring before you many honourable persons who will speak what they know of me in my profession, and in private life, which will the better enable you to judge whether what I have offered in my defence may safely be received by you as truth. Gentlemen, I submit myself entirely to your judgment. I hope to obtain my liberty, through your verdict ; and to employ it with honour in the defence of the liberties of my country.”

This address was composed for him by his counsel, Mr. (afterwards Lord) Erskine.

The Captain gave the following distinguished evidence to character :—

Admiral Lord (now Viscount) Hood.—I have been acquainted with the prisoner, Captain Macnamara, eight or ten years ; I had the good fortune to promote him in the year 1794.

Mr. Erskine.—Is he an officer of merit ?

Mr. Justice Heath.—His merit has nothing to do with the subject ; I will not hear such a question asked.

Mr. Erskine.—Tell us then, my Lord, what you know as to his general demeanour, whether he is a man who has always properly conducted himself ?

Lord Hood.—I never heard of anything to the contrary; I always considered him a man of great moderation, and of gentlemanly manners; it was from the high situation in which he stood, in my opinion, as an officer of merit, that I promoted him.

Admiral Lord Nelson.—I have known Captain Macnamara nine years; he has been at various times under my command; during my acquaintance with him, I had not only the highest esteem and respect for him, as an officer, but I always looked upon him as a gentleman, who would not take an affront from any man; yet, as I stand here before God and my country, I never knew nor heard that he ever gave offence, to man, woman, or child, during my acquaintance with him.

Admiral Lord Hotham.—I have known Captain Macnamara since 1794; as far as ever I saw, and I have had opportunities of seeing a great deal of him, I always considered he was the strictest gentleman I ever met with; he ever deported himself evenly and properly; he was everything one would wish in a companion.

Lord (afterwards Earl of) Minto.—I have the honour of knowing him since 1783, and to the beginning of 1797; I had occasion to sail on board his ship, and have had frequent occasions of being in his company. In private life, from the opportunities I had of observing him, I thought him a lively, good-humoured companion, and I never heard of his being a captious or quarrelsome man, but the very reverse.

Admiral Sir Hyde Parker.—I have been acquainted with Captain Macnamara since the year 1790. In the particular situation I was placed, as captain to the admiral, I had frequent opportunities of seeing him: he joined us in the year 1790. I never heard of his quarrelling. I frequently heard he was that sort of man, who would not receive an insult; but that he was far from being disposed to quarrel; he is an honourable and respectable man.

Admiral Sir Thomas Trowbridge, Bart., K.B., and one of the Lords of the Admiralty.—I have known Captain Macnamara for eight or ten years, and have been in habits of intimacy with him. I have always considered him a very estimable character, and never saw in him any disposition to quarrel.

Mr. Justice Heath then addressed the Jury, and the Jury retired from court for about twenty minutes, and, on their return, the Foreman pronounced a verdict of—*Not Guilty*.

Had Colonel Montgomery survived, he would probably have succeeded to the family title : as it was, his elder brother, Sir George Montgomery, the second Baronet, died without issue, in 1831, and the Baronetcy then became extinct.

## MAJOR CAMPBELL'S DUEL.

THE fatal duel just related arose out of circumstances so trivial, that one cannot but deplore a practice which thus, for a mere nothing, caused the death of one gallant and distinguished servant of his country, and the misery of another. Yet if there be any duel likely to increase the reader's melancholy, it will be the one which gave rise to the following trial, and its terrible result. This series has in general avoided reports of duels, unless they be, like this one, of some peculiar and remarkable kind ; for the very sameness of most of these transactions renders them as distasteful in narrative as they are sad in circumstance. Unlike other offences against the law, duelling, or rather the imperious fashion that was wont to encourage it, brought honest and good men upon the stage of crime, whose straightforward conduct lacked usually that system of artifice and design, and those dark characteristics which give such strange charm and absorbing interest to the deeds of ordinary felons. High treason may be an exception to this, but there the cause is often a great one, and supplies other deficiencies ; while in duelling the moving spring to action is almost invariably petty and pitiful in the extreme. Fortunately some recent mortal combats, with shopmen for their heroes, have rendered duels unfashionable in this country ; real gentility and honour have at last, it is to be hoped, for ever, joined with religion and virtue here in casting a barbarous and worse than useless habit aside. If there be any one who would revive the custom, let him first pause and ponder over the fate of the Alexander Campbell of this trial.

This miserable victim of duelling was connected with the noble house of Breadalbane ; he was first cousin of John the fourth Earl and first Marquis of Breadalbane. He was a Brevet-Major in the army, and a Captain

in the 21st regiment—a man of known conduct, courage, and honor. By all who knew him he was respected and beloved; by his wife and family he was all but adored—in proof, her nearly superhuman struggles and devotion to save him.

The duel in which he was engaged took place in Armagh in 1807. Campbell's opponent perished, and Campbell himself escaped from Ireland, and lived with his family, under a fictitious name, in Chelsea; but his mind became so uneasy that he at last surrendered himself.

Accordingly, in the summer of 1808, he was tried at the Armagh assizes on an indictment for the wilful and felonious murder of Alexander Boyd, captain in the same regiment, by shooting him, the said Alexander Boyd, with a pistol bullet, on the 23d of June, 1807, in the county of Armagh, in the kingdom of Ireland.

The evidence tells the tale.

George Adams, who was assistant-surgeon in the 21st regiment, said he knew Major Campbell and Captain Boyd. In June, 1807, they were quartered in the barrack in the county of Armagh, side of Newry. On the 23d of said month he was sent for in great haste to Captain Boyd, who died of a wound he received by a pistol bullet, which penetrated the extremity of the four lower ribs, and lodged in the cavity of the belly. On that day the regiment was inspected by General Kerr, and after the inspection the general and officers messed together. About eight o'clock all the officers left the mess, except Major Campbell, Captain Boyd, witness, and a Lieutenant Hall. A conversation was then commenced by Major Campbell stating that General Kerr corrected him that day about a particular mode of giving a word of command, which he conceived he gave right. He mentioned how he gave it, and how the General corrected him. Captain Boyd remarked that "neither was correct according to Dundas, which is the king's order." (This colloquy, witness stated, took place in the usual mode of conversation.) Major Campbell said it might not be according to the king's order, but still he conceived it was not incorrect. Captain Boyd still insisted it "was not correct according to the King's order." They argued this some time, till Captain Boyd said, "he knew it as well as any man." Major Campbell replied, he doubted that much. Captain Boyd at length said, "he knew it better than he did,\* and he might take that as

\* Captain Boyd had risen from an inferior station solely by his merit, and this probably made him more confident, and his remark more cutting.



he liked." Major Campbell then got up and said, "Then, Captain Boyd, do you say I am wrong?" Captain Boyd replied, "I do; I know I am right according to the king's order." Major Campbell then quitted the room. Captain Boyd remained after him some time: he left the room before witness or Lieutenant Hall, but no observation was made on his going, more than any other gentleman who had dined there. Witness and Lieutenant Hall went out together in a short time after; they went to a second mess-room, and there Captain Boyd came up to them and spoke to them. They then went out together, and witness left Captain Boyd at Lieutenant Deivaris's. In about twenty minutes after he was called upon to visit Captain Boyd. He found him sitting in a chair vomiting blood; he examined his wound, and conceived it a very dangerous one. He was in great pain, and survived it but eighteen hours. Witness staid with him till he died, during which time he got gradually worse till his dissolution.

John Uvey stated, that he is a mess-waiter of the 21st regiment, and was so then. He remembered the night this affair took place; knew Major Campbell and Captain Boyd. He saw Major Campbell that night in a room where he was washing glasses; Major Campbell had quitted the room about ten or fifteen minutes. As the major was coming up stairs Captain Boyd was leaving the mess-room, and they met on the stair-head; both went into the mess-waiter's room, and there remained ten or fifteen minutes, when they separated. Prisoner, in about twenty minutes, came again to witness, and desired him to go to Captain Boyd, and tell him a gentleman wished to speak to him, if he pleased. Witness accordingly went in search of Captain Boyd; he found him on the parade-ground; he delivered the message, and Captain Boyd accompanied him to the mess-room; no one was there. Witness pointed to a little room off it, as the room the gentleman was in. He then went to the mess-kitchen, and in eight or ten minutes he heard the report of a shot, but thought nothing of it till he heard another. Witness then went to the mess-room, and there saw Captain Boyd and Lieutenants Hall and M'Pherson. Captain Boyd was sitting in a chair vomiting blood. Major Campbell was gone; but in ten or twelve minutes he came to the room where witness was washing glasses. Major Campbell asked for candles; he got a pair, and brought them into the small room. Major Campbell then shewed the witness the corners of the room in which each person stood, which distance measured seven paces. Witness never

saw Major Campbell after till a week before, though witness never quitted the regiment, but retained his employment.

John M'Pherson stated, that he was lieutenant in said regiment; knew Major Campbell and Captain Boyd, and recollected the day of the duel. On the evening of that day, going up stairs about nine o'clock, he heard, as he thought, Major Campbell say, "On the word of a dying man, is everything fair?" He got up before Captain Boyd replied. He said, "Campbell, *you have hurried me—you are a bad man!*" Witness was in coloured clothes, and Major Campbell did not know him; but said again, "Boyd, before the stranger and lieutenant, was everything fair?" Captain Boyd replied, "Oh no, Campbell, *you know I wanted you to wait and have friends!*" Major Campbell then said, "Good God! will you mention before these gentlemen—was not everything fair? Did not you say you were ready?" Captain Boyd answered, "Yes;" but in a moment after said, "Campbell, *you are a bad man!*" Captain Boyd was helped into the next room, and Major Campbell followed, much agitated, and repeatedly said to Captain Boyd, that he (Boyd) was the happier man of the two. "I am," exclaimed Major Campbell, "an unfortunate man, but I hope not a bad one." Major Campbell asked Captain Boyd if he forgave him. He (Captain Boyd) stretched out his hand, and said, "I forgive you—I feel for you—and am sure you do for me." Major Campbell then left the room.

John Greenhill was produced to prove that Major Campbell had time to cool after the altercation took place, inasmuch as he went home,\* drank tea with his family, and gave him a box to leave with Lieutenant Hall, before the affair took place.

The learned judge, Mr. Baron McClelland, in his charge, briefly summed up the main points, and thus concluded:—

"It has been very accurately stated to you by the counsel for the prosecution, that illegally killing a man, by the law of England, must fall within one of the three species—homicide, manslaughter, or murder; and that with homicide you had nothing to do, as the case before you was clearly neither chance-medley, self-defence, nor any kind of justifiable homicide. The case, then, must either be manslaughter or murder.

\* The Major, in fact, went home to his lodgings; Mrs. Campbell saw that he was irritated, and asked the cause; he replied that some of the boys had quarrelled; then making a trifling excuse, he sent Mrs. Campbell out of the room, and in the interim procured his pistols. With these fatal weapons he returned to the mess-room.

Manslaughter is illegally killing a man under the strong impulse of natural passion. Three qualities are necessary to constitute it. In the first place, the passion must be natural ; that is to say, such as is natural to human infirmity under the provocation given ; secondly, the act must be such as the passion naturally, and according to the ordinary course of human actions, would impel ; and thirdly, and indeed mainly, the criminal act must be committed in the actual moment of the passion, *flagrante animo*, as it is termed, and before the mind has time to cool. The act of killing, under such circumstances, is manslaughter. But if any of these circumstances be wanted ; if the passion be beyond the provocation—beyond what the provocation should naturally and ordinarily produce ; if the act be beyond the passion—beyond what the passion would naturally and ordinarily impel, or if it be not committed in the very moment of the passion, and before the passion either has or should have passed away ;—in all these cases, the act of criminal killing is not manslaughter, but murder.

Now, to apply this to the present case.—The provocation, as stated by the evidence, consisted in these words, “Do you say I am wrong ?” “Yes, I do ;” and the manner in which those words were said. It remains for you, therefore, gentlemen, to judge, whether such a provocation was sufficient to constitute that passion which, under the interpretation of the law, would render the prisoner at the bar guilty of manslaughter only, or whether the consequent passion was not above the provocation, and, therefore, that the prisoner is guilty of murder. You will consider this coolly in your own judgment, and will remember, upon this point the evidence that has been given ; that the words were certainly offensively spoken, but that it was in the heat of argument, and that by a candid explanation, as the evidence expressed it, the affair might not have occurred.

You will next have to consider, whether the criminal act was committed in the moment, the actual moment of the passion ; or whether the prisoner had time to cool, and to return to the use of his reason. Upon this point, you must keep your attention more particularly fixed on that part of the evidence which goes to state that Major Campbell returned home, took his tea, and executed some domestic arrangements, after the words, and before the meeting. If you are of opinion, either that the provocation, which I have mentioned to you, and which you collect from the evidence, was too slight to excite that violence of passion which the

law requires for manslaughter ; or that, be the passion and the provocation what it might, still that the prisoner had time to cool, and return to his reason—in either of these cases, you are bound upon your oaths to find the prisoner guilty of murder.

There is still another point for your serious consideration. It has been correctly stated to you by the counsel, that there is such a thing which is called the point of *honour*—a principle totally false in itself, and unrecognized both by law and morality ; but which, from its practical importance, and the mischief attending any disregard of it to the individual concerned, and particularly to a military individual, has usually been taken into consideration by juries, and admitted as a kind of extenuation. But in all such cases, gentlemen of the jury, there have been, and there must be, certain grounds for such indulgent consideration—such departure from the letter and spirit of the law. In the first place the provocation must be great ; in the second place, there must be a perfect fair dealing—the contract, to oppose life to life, must be perfect on both sides, the consent of both must be full, neither of them must be forced into the field ; and thirdly, there must be something of necessity, to give and take the meeting ; the consequence of refusing it being the loss of reputation, and there being no means of honourable reconciliation left.

Let me not be mistaken on this serious point. I am not justifying duelling ; I am only stating those circumstances of extenuation, which are the only grounds that can justify a jury in dispensing with the letter of the law. You have to consider, therefore, gentlemen of the jury, whether this case has these circumstances of extenuation. You must here recall to your minds the words of the deceased, Captain Boyd, “ You have hurried me. I wanted to wait and have friends. Campbell, you are a bad man.” These words are very important ; and if you deem them sufficiently proved, they certainly do away all extenuation. If you think them proved, the prisoner is most clearly guilty of murder ; the deceased will then have been hurried into the field ; the contract of opposing life to life could not have been perfect. It is important, likewise, in this part of your consideration, that you should revert to the provocation, and to the evidence which stated that the words were offensively spoken, so as not to be passed over ; but that the affair would not have happened, if there had been a candid explanation. Gentlemen of the jury, you will consider these points, and make your verdict accordingly.”

The jury then retired, and, after remaining about half an hour out of

court, returned with their verdict, "Guilty of murder;" they however recommended the prisoner to mercy.

Sentence of death was immediately passed on the unfortunate gentleman, and he was ordered for execution on the following Monday; but in consequence of the recommendation of the jury, he was respited till Wednesday se'nnight. In the meantime, every effort was made by the friends of the unfortunate man to procure the royal mercy. The grand jury of the county, and the jury who had found him guilty, presented petitions to the Lord-Lieutenant at Dublin.

Dr. Millingen, in his able "History of Duelling," thus narrates the sequel:—

Mrs. Campbell, who was tenderly attached to her husband, having resolved to proceed to London, and solicit the Royal mercy, hastened to the sea-coast, but found that unexpected circumstances threatened to frustrate her fondest hopes. It blew a perfect hurricane, and no reward could tempt the captain of any vessel to venture to sea. While she was running up and down the shore in a distracted state, she met a few humble fishermen; and these poor fellows no sooner heard the cause of her agony than they offered her their service and their boat, in which she actually crossed the channel. Her noble companions not only refused to receive any reward, but attended her to the coach-office, and followed her several miles on the road, praying God to bless her and grant her success.

On arriving at Windsor with her petition it was past eight o'clock, and the King had retired to his apartment; but the Queen, compassionating the afflicted wife, presented the memorial that night, and Mrs. Campbell received the kindest attention from the whole of the Royal family.

The case was anxiously debated in the council; but, after a full review of the circumstances, it was finally resolved that the law should take its course. Mrs. Campbell in the meantime proceeded to Scotland, cheered with the hope of obtaining, at least another respite. She reached Ayr, her paternal home, on the very morning that her husband's corpse was brought thither to be interred.

When Major Campbell heard that his fate was decided, he prepared to meet death with the fortitude of the soldier and the resignation of the Christian. A change had come over the public mind, and universal sorrow for his fate had taken place of the prejudices which inaccurate reports of the duel had produced. By a strange concurrence of circum-

stances, his own regiment mounted guard round the scaffold. A vast multitude occupied every spot from which a view of the place of execution could be obtained. The crowd displayed the unusual show of all the gentry from the neighbouring country, assembled in deep mourning.

Precisely at noon Major Campbell appeared on the platform, supported by his father-in-law. Instantly the brave highlanders took off their military bonnets ; and with streaming eyes, joined in prayer for the spirit about to be parted from its mortal tenement. The vast crowd stood uncovered in solemn silence, so that the grating of the falling drop was heard to the remotest extremity. One groan from the thousands of spectators, for an instant broke the profound silence, and proclaimed that all was over ! His body, after having been suspended the usual time, was put into a hearse in waiting, which left the town immediately, escorted by Dr. Bowie, for Ayr in Scotland, to be interred in the family vault.

Major Campbell, in his conversation with his intimate friends, previously to surrendering himself had always said, that if he were convicted of murder, he should suffer, as an example to duellists in Ireland ; but it was always his opinion that a jury would not convict him of murder.

It has been erroneously stated, that the jury recommended the deceased, merely from his universal good character ; but the jury recommended him in consequence of the duel having been a fair one ; although, by the direction of the judge, they were bound, on their oaths, to convict the prisoner of murder. Major Campbell previously to his death, observed that life was not an object so dear to him, as the reflection was distressing, that his children and family should bear the stigma, that he was executed for murder.

Major Campbell made his escape from Ireland after the duel, and lived with his family, under a fictitious name, for several months, at Chelsea (the duel took place in June 1807) ; but his mind became so uneasy that he at last determined to surrender himself, be the result what it might.

His surrender, instead of being viewed as the result of penitence and sorrow, was regarded by too many as a mockery and a braving of justice. Utterly false as such a view of the case was, Campbell confirmed the prejudice against him by incautiously declaring, that he was sure the verdict could only be manslaughter. The misrepresentation of

these words, as has been said, produced a strong effect on the minds of the Presbyterians of Armagh. His modest and contrite deportment on his trial, and the excellent character given him by officers of the highest rank, went far towards turning the tide in his favour; but one of the witnesses for the defence is said to have exhibited a dictatorial air, as if his simple word would, or ought to decide the verdict; and this circumstance, it is reported, had a fatal influence.

He was first cousin to the Earl of Breadalbane, a man esteemed and beloved by all his friends. It is superfluous to add, that Mrs. Campbell was a most amiable woman. She had four infant children.

The unfortunate catastrophe, which produced such an awful result to Major Campbell, it is hoped will not fail to leave a lesson to mankind of salutary influence. Both of the parties were gentlemen, eminent in their profession, of high character and honour, who had long lived on terms of mutual friendship and esteem. The unfortunate irritation of a moment, at once deprived society of one of the best of men, and left a widow and infant family to mourn their irreparable loss. Retribution of the most awful kind fell to the lot of the other; and his amiable widow and helpless family were also involved in all the distress which the human mind can conceive.

From the period of the unhappy event to the closing of the tragic scene, Major Campbell evinced the most heartfelt grief for what had happened to his friend."

In a book published in 1816, entitled "Observations on England," by Oloff Napea a Russian officer, the above trial is referred to at page 243 in the following passage :—"Laws are enforced against duelling with their characteristic ferocity; and the accused only escape an ignominious death, like malefactors, by the chicanery of lawyers, and the connivance of surviving friends. Within two or three years, I am told of a colonel being thus executed in Ireland, for killing his opponent, because he could not shew the judges that he himself had been provoked or challenged by the deceased."

## THE MURDER OF MR. AND MRS. BONAR.

MR. Thompson Bonar and his wife, the victims of this dreadful murder, were persons of the highest respectability. Mr. Bonar was a scion of the ancient house of Bonar of Kilgraston in Scotland, and having acquired the lands of Camden and Elstead in Kent, he established a branch of the family in that county, which is still existing there. His residence, called Camden Place, was at Chislehurst in Kent, and was remarkable as the spot whence the first Lord Camden took his title. Mr. Bonar, who was born in 1743, had married Anne, the daughter of his mother's brother, Andrew Thompson, Esq., and had two sons and a daughter. He was in partnership with Mr. Angerstein, the eminent and well-known insurance broker. Mr. and Mrs. Bonar were most popular in their neighbourhood on account of their benevolence and philanthropy, and they were living in the greatest comfort and happiness, when this foul and unaccountable slaughter was committed upon them.

On Sunday evening the 30th May, 1813, Mr. Bonar went to bed at his usual hour, but Mrs. Bonar, who was in the habit of sitting up late, did not follow him till two o'clock, when she ordered her female attendant to call her at seven. The servant at the appointed time went to the bedroom of her master and mistress, who usually slept with their door open at this season; but she found Mr. Bonar mangled and dead upon the floor, and her lady wounded, insensible, and dying in bed. A bent poker which was lying on the ground, and the fractured condition of the heads of the unfortunate victims, too plainly denoted with what instrument the act had been committed.

As there were some remains of life in Mrs. Bonar, servants were



sent in haste for surgical assistance ; but it arrived too late ; the wounds were mortal, and she expired at one o'clock, having, during the whole previous time, been insensible, and only once uttering the exclamation of Oh dear !

Such a scene of horror as the bed-room presented had seldom been witnessed. The first object was the dead body of Mr. Bonar, with the head and hands dyed in blood ; the skull being broken into fragments in two or three places ; and there was a dreadful laceration across the nose, as if effected by the edge of the poker. His hands too were mangled in several places, apparently by the same instrument, and there was a severe wound on the right knee. From the numerous wounds on the body of Mr. Bonar, the swollen state of his mouth, and the convulsive adhesion of the hands and knees, it was clear he had struggled with all his force against his assassin. His nightcap, which lay a few paces from the head, was drenched in blood, with a lock of his grey hair sticking to it, which seemed to have been struck from the skull by the violence of the blow of the poker. The pillow of his bed lay at his feet also covered with blood. The manly athletic person of Mr. Bonar (for though seventy he was still a powerful man), gave an increase of horror to this afflicting sight. The view of Mrs. Bonar, though equally distressing, excited more pity than terror ; though her head had been fractured in a dreadful manner, yet there was a calm softness in her countenance, more resembling a healthy sleep than a violent death ; it might have been supposed that her life had parted from her without one painful effort. The linen and pillow of the bed in which she lay were covered with blood, as was also the bed of Mr. Bonar. They slept in small separate beds, but placed so close together that there was scarcely room for a person to pass between them.

About seven o'clock in the evening, Mr. Bonar, the elder son of the murdered couple, arrived from Faversham, where he was on duty as Colonel of the Kent local militia. In spite of the efforts of Mr. Angerstein, jun. and some other gentlemen, he rushed up stairs, exclaiming, " let me see my father : indeed I must see him." It was impossible to detain him ; he burst into the bed-chamber, and immediately locked the door after him. Apprehensions were entertained for his safety, and the door was broken open, when he was seen kneeling with clasped hands over the body of his beloved father.

Yet it appeared that there had been no attempt at robbery, and no motive could be imagined for the assassination of two persons who were universally beloved by all who knew them. No part of the house had been broken into, but the house door was found open in the morning. Mrs. Bonar did not retire to bed till two o'clock ; and at four o'clock a washer-woman let herself in. None of the servants had been alarmed by any cries in the night, but their division of the house was at some distance from the wing in which Mr. and Mrs. Bonar slept ; and though the room was covered with blood, there was no trace of a bloody footstep below, and only one or two marks of blood in the ante-room or hall.

The murdered remains were buried at Chislehurst. They were attended through the last ceremonies by Mr. and Mrs. Bonar, and Miss Bonar, the latter the only daughter of the deceased, (since married to Count De Moretti) Mr. Hankey, Mr. Wiguland, and Mr. Angerstein, jun., Mr. Thomson, Mr. Charles Hammersley, Mr. George Hammersley, and Mr. Angerstein, sen., the Rev. Mr. Lockwood (the rector), Mr. Locke, Mr. Wollaston, and a young lady. The mournful cavalcade moved slowly, attended by undertakers, pages, and mutes, around a part of the heath, and from thence to the church at Chislehurst, where, after the performance of the usual rites, the coffins were carried, parallel with each other, to the grave.

The Rev. Mr. Lockwood performed the funeral service in a very impressive manner ; Col. Bonar stood on his right hand, with Mrs. Bonar (his wife, a co-heretrix with her sister, Lady Hay, of Guthrie of Hawkerston) holding one arm, and Miss Bonar the other. It was a most affecting spectacle, and powerfully excited the sympathies of a numerous body of spectators.

About seven o'clock in the morning after the murder, when the alarm was first raised among the servants, the footman, Philip Nicholson, was sent express to London on one of the best horses in the stable. He went first to the house of Mr. Astley Cooper, in Broad Street, thence to the Red Lion, near Bedlam, where he saw one Dale, a man who had lately been discharged from the service of Mr. Bonar, and to whom he thus expressed himself:—*The deed is done, and you are suspected: but you are not in it.* He then proceeded to the office at Bow Street to give information of the murder, and stated that he had seen Dale at the Red Lion, when his insinuations induced the officers to go after Dale. Nicholson appeared intoxicated at the office ; indeed he had been seen to take three glasses

of rum at the half-way house. The officers then directed him to follow them, but they soon lost sight of him.

Dale, to whom the officers went in consequence of what was said by Nicholson, had been butler in the family, and was discharged about a fortnight previous for such ill conduct that Mrs. Bonar wished to have him prosecuted, but Mr. Bonar was content to dismiss him. He underwent an examination before the magistrates, but was dismissed, because he had clearly established an *alibi*, proving that he was at the Red Lion from eleven o'clock on Sunday evening till six o'clock on Monday morning. He was therefore suffered to return to his wife, who resided at Chislehurst.

Suspicion having now fallen on Philip Nicholson, owing to his incoherent language and conduct, and to his not returning direct to Chislehurst, a warrant was granted by the Lord Mayor for his apprehension, and one of the city officers went in quest of him. After diligent inquiry he was found, on horseback, drinking at the inn door of the Three Nuns, in Whitechapel. A smart scuffle ensued, in which Nicholson received some bruises, but he was secured, and conveyed to Giltspur-street Compter. He was now in a state of intoxication approaching to insanity.

Next day he was brought to the Mansion-house, and it appeared that he had conducted himself since the death of his master and mistress in the most unfeeling manner. He said, that the night preceding the murder he went to bed about twelve o'clock, and knew nothing of what had happened until called up by the housemaid about eight o'clock next morning, and that he had fastened some of the windows inside at the usual hour, while the rest were attended to by the housemaid.

It further appeared that on the murder being discovered, and the servants assembled, he with others went to the room where his master and mistress lay. The former was found quite dead, in a mangled state, and the latter just evinced signs of life; he himself ascertained the fact by placing his ear near to the mouth of his mistress. The floor was covered with blood and other matter. He then took the sheets from his master's bed and with them wiped the floor, and having done so he took the bloody linen to the room where he slept. The groom was present, and assisted him to pull the upper sheets from his own bed to fold with those of his master's, and he then put them altogether under his own bed.

Upon this point he was closely pressed by the Lord Mayor, and was desired to explain his motive for using the sheets to absorb the blood, and then afterwards to fold them in the linen from his own bed, when he ought to have known that in such cases nothing should be disturbed about the persons of the deceased. He answered he was ignorant of that; what he had done was with the best intention, conceiving as he did that so horrid and unpleasant a sight would have been offensive to any person having occasion to enter the room. The other servants he admitted would touch nothing. His night-shirt, he said, he left in his bed when he got up, and it might be found. He was then asked as to a foot mark in blood which appeared on the stairs leading from his apartment to that in which the murders were committed, and he said, if there were any, it might have been done when he went backwards and forwards with the soiled sheets; but he was told that the mark had been seen before he left his room in the first instance. He was then stripped and examined in a private room, in order to see if he had any bruises about him, which he might have received in the conflict with Mr. Bonar. Trifling bruises were found on his person, particularly one on his forehead; but those were explained to have been received in the scuffle with the city officer.

On being questioned as to his conduct on the way to town, the prisoner admitted that he left Chislehurst a little after eight o'clock, and that he refreshed himself and the horse three times on the road—himself with three glasses of rum, and the horse with three pints of porter; and notwithstanding this it appeared, both from his own admission and from information derived from Mr. Astley Cooper, that he performed the journey of twelve miles in about forty minutes.

After giving information at Bow-street, instead of returning home to Chislehurst, he repaired to Whitechapel to call on his friends, with whom he was making merry when he was taken into custody. He was now sent to Chislehurst in care of two officers to give evidence before the coroner's jury.

The inquest closed their sitting at one o'clock on Wednesday morning, and returned a verdict of wilful murder against Philip Nicholson, the footman, and at twelve o'clock news was brought that he had cut his throat. He had secreted a razor from the butler's pantry, where he was confined, in the pocket of his small-clothes, and had cut his throat whilst in the water-closet. A surgeon who attended the inquest immediately sewed up the wound. The gash was so deep, and he bled so copiously,

that it was supposed he could not live many minutes. The wound was so large that the head was almost severed from the body. He was able to speak, though he would make no confession, but persisted in declaring his innocence, and appeared calm and composed during the whole period that he was sensible.

On Monday, the 7th of June, he confessed himself to be the perpetrator of the murder. On that day he was visited by Lord Castlereagh, Lord Camden, Lord Robert Seymour, and others, and shewed repeated symptoms of annoyance and agitation, which caused his wound suddenly to bleed afresh, and the hæmorrhage being of an alarming nature, the Rev. Mr. Bramston, a Catholic priest (afterwards the Right Rev. Dr. Bramston, Vicar Apostolic of the London district), came to him. On Tuesday morning Nicholson voluntarily requested Mr. Bramston to bring Colonel Bonar to him immediately, when Nicholson, bursting into tears, expressed his wish to make a full confession; and he made, and afterwards signed, a deposition, acknowledging himself to be the murderer. In consequence of his information search was made for his bloody linen, and it was found in a laurel bush close to the house, covered with leaves, the stockings were very bloody, and the shirt was rent almost to rags about the neck and front.

He was tried at the following Maidstone assizes for petty treason, the crime of a servant killing his master being such in law. Mr. Justice Heath presided. Mr. Sergeant Shepherd and Mr. Roberts were the prosecuting counsel. The indictment differed from a common indictment for murder, by an averment, stating that Nicholson was servant to Mr. Bonar, and that he *traitorously*, as well as feloniously, murdered his master. He pleaded not guilty, in consequence, he said, of the persuasion of several persons.

The first witness called was Mary Clarke.—At half-past seven o'clock the housemaid waked her and told her there was a bad smell in the ante-room coming from the bed-chamber of her mistress, and asked the witness whether she had lit the rushlight, which was gone, and whether she had locked the door of the ante-room on the outside: at the same time she told the witness that there were footmarks in the ante-room. Witness immediately was much alarmed, and cried out (as she was told, for she was too much agitated to have any recollection of the circumstance) that there had been murder. The unusual circumstances which had been mentioned to her induced her to think that something dreadful had been done. She went up stairs with the housemaid, and knelt down on the floor of the ante-room, to see what the marks were, and thought they

looked like blood : she did not know whether she then looked into the bed-room ; but thought she did, and saw the toilet thrown over, and some things lying on the floor. Witness then went to the wash-house to the laundry-maid, and asked her to go back with her, to see what was the matter ; they proceeded together to the bed-room, when the laundry-maid went in and opened one of the window-shutters, and on looking back, she clapped her hands together and screamed. Witness saw the bed-clothes and other things on the floor ; she then ran down stairs, leaving the laundry-maid behind : in the servants' hall she saw the coachman, who made her sit down, as she was fainting. When she recovered herself she saw the footman, Nicholson, coming into the servants' hall with what she thought were bloody sheets in his hands ; he took a sheet from his bed, and folded the bloody sheet or sheets in it. The footman then said to witness, Mrs. Clarke, go to your mistress, she is still alive, perhaps she may be recovered. She then ran up stairs, and saw her master's body covered with, she believed, a blanket, on the floor ; her mistress was in bed, and still breathing ; did not see her mistress afterwards till she was dead.

Susannah Curnick was next sworn.—She rose about half-past six, leaving Mrs. Clarke in bed. In passing through the hall she observed the house door about half open, a circumstance she had never seen before ; she shut the door, and then went to the lawn door, which was shut, but the shutters were open. The window shutters in the library were closed ; she then went into the drawing-room, where all the windows were shut but one in the centre, which was wide open. She then went up stairs and found the ante-room locked, with the key outside ; she opened the door, and saw footmarks on the floor, and the rushlight was not in its stand. She then repaired to her own room to call Mrs. Clarke, to whom she told the circumstances which she had witnessed. Mrs. Clarke exclaimed in great alarm and agitation, then my master and mistress are murdered ! She helped Mrs. Clarke on with her gown, and they went together to the bed-room. Mrs. Clarke was afraid to go in, and witness did not go in, as she had never been accustomed so to do. They knelt down and saw that the footsteps were bloody. They then went together to the pantry. Witness did not go up again till after the footman came down with the sheets. The footman cried out for assistance, saying his mistress was not yet dead. The footman left the bundle in the hall, and said he would go to Mr. Astley Cooper, and for his mas-

ter's partner, as he said he was the fittest person to know what had happened. He then went down the yard with the coachman. The poker in the bed-room lay between her master and the blanket, on the floor. Had never seen anything particular in the footman's conduct. Saw him both before and after the discovery in the morning, and he appeared sober.

Penelope Folds had been laundry-maid in the family fifteen years. She rose a little after four o'clock on the Monday morning, and soon after the washerwoman came, who let herself in by the laundry-door. About half-past seven Mrs. Clarke came to witness in the laundry, and said she was afraid something was amiss ; and asked the witness to go up stairs with her. She did so, and went into the bed-room, and opened part of one of the window shutters. She saw her master's body lying on the floor, and blood on her mistress's pillow. She came down stairs and went up again, when she saw the footman covering her master with a blanket ; he said that Mrs. Bonar was still alive ; he was the first who made this remark : it was not made to him : he said he must go to town, though she desired him not to leave the house without a man in it.

William Evans, the groom, had been in the service of the family since December. He was in the house till after twelve o'clock on Sunday evening, sitting with the footman, and never saw him in better humour. He had never heard him say anything disrespectful of his master or mistress, except now and then an angry expression at being overworked,—such as “ D—n the old woman, she wears me out.” He said that he saw the footman dabbing the sheets in the blood at the foot of the bed.

W. Randall had been coachman in the family for eight years : slept over the stables ; came to the house about half-past seven, and went to call Nicholson ; found him sitting on his bed side ; and almost immediately heard the cry of murder from the female servants. It was not long before he saw Nicholson come down stairs with bloody linen, and wrap it up in a sheet in the servants' hall. The footman was a very quiet, good fellow-servant, but used, when he had money, to get drunk. The rest of the servants observed they could not have handled the sheets as Nicholson did. Nicholson was very anxious to go to London, and would have a horse. Coachman thought Nicholson wild-looking when he went away, and appeared as if he could not ride, though he had been in the dragoons.

Charles King had been a labourer for seven years in the family ; came to



work at between five and six on Monday morning; came to the house about twenty minutes after six, got into the house by the laundry, went into the hall, and found the front door open. Philip was then in bed; he went to him and said, How is it you sleep with the door and window shutters open? He answered, I did not know that they were open. I am sure he was in bed with his shirt on.

Lavender, the Bow-street officer, stated, that he arrived on Monday, about one o'clock; he found a pair of shoes by the side of the footman's bed, which he compared with the traces in the ante-room, and, as he thought, the impression corresponded with the shoes: the shoes were not fellows; a night-cap was found on the footman's bed, with some stains, apparently bloody.

Foy, of Marlborough-street, compared the shoes, which he had found on Tuesday morning in a closet in the servants' hall, with the foot traces, and found they tallied: the shoes were odd; one common heeled, and worn at the toe; the other with a spring heel, as was the case with the shoes which Lavender found; there was blood both on the soles and the upper leather. He had shewn them to Nicholson, who acknowledged them to be his, and said he believed one of them had slipped off in the room from which he fetched the sheets. Foy found them together in the cupboard. Nicholson had also acknowledged the night-cap, and said he supposed the bloody stains came from the blood on the sheets.

The groom was called again, and said he found the shoes that morning in the closet where he went to look for a stick to beat Mr. Bonar's coat; he saw they were bloody, and shewed them to King, and then put them back again.

The poker was then produced: it was bent in the upper part: it was a common kitchen poker, about two feet four inches long.

The examination being concluded, the following confession was read, which corroborated their testimony.

*Declaration of Nicholson.*

I, Philip Nicholson, to clear the innocence of others, and tell the truth of myself, I committed the murder.

Question by Mr. Bonar.—Had you accomplices?—No, sir, I would tell you if I had.

I do not mean accomplices in the room, but others?—No, sir, I did not know it myself five minutes before.

Explain how it happened.—I was sleeping upon the form, and waked



about three o'clock ; I put the sheet around me, and took the poker from the hall grate, and a lighted candle in my hand from the hall ; I entered the room ; I looked about when I entered, and gave my mistress two blows ; she never moved ; I left her, and went round to master, and gave him two or three blows ; and he said, Come to bed, my love, and then he sprung from the bed and seized hold of me. I hit him in the struggle about the arms and legs ; we struggled fifteen minutes or better ; he was very near getting the better of me ; I got him down by force, and left him groaning. I went down to wash my hands in the sink of the butler's pantry, and opened the house-door and drawing-room windows.

What motive had you ?—I had no bad intention. I did not know what provoked me to do it, more than you do.

You were heard to complain of going so much behind the carriage ?—Yes ; but I never thought of doing it from that.

Did you ever feel resentment for going so much behind the carriage ?—No, sir, I never thought much about it.

Had you thought or talked of this murder when you were drinking with the groom the night before in the hall ?—No ; I never thought of it myself, or had any idea of it myself.

How long was it after you waked that you went up stairs ?—I jumped up ; I was half undressed when sleeping upon the form ; I undressed, and put the sheet about me.

Why did you put the sheet about you ?—That they might not know me.

When did you drop the sheet ?—In the struggle. I had it on when I gave the first blow.

By Mr. Astley Cooper.—Did Dale, the butler, know anything about it ?—No, sir.

Did any of the maid servants know anything about it ?—Not a word.

Why did you go to Dale in London ?—Nothing particular.

Was it your intention to take anything away ?—No, sir.

What was your intention ?—Nothing particular : but when I went into the room I saw my master and mistress asleep, and I gave her two blows.

Were you drunk when you went to bed ?—No, sir, I had drunk nothing but beer. I had not had a drop of spirits all day.

Had you at any former time thought of this murder ?—No, sir, I never thought of such a thing in my life.

What did you do with your bloody things?—My shirt, neckcloth, and stockings, I put opposite the hall door, in the shrubbery, under some leaves, near the little gate. The breeches I kept on all day. When I waked from the form, I only took off my waistcoat.

What did you wipe your hands with?—With the sponge in the sink, which I left there.

What did you do with your shoes? Did you put them into the wood closet?—I might; but I do not remember.

What did you do with the rushlight?—I threw it into the coal closet.

Why did you take the rushlight?—It was dark in the house.

Why did you think it was three o'clock?—By the break of day.

Why did you open the shutters of your room?—To shew me light.

Was it to see your clothes?—No, I had seen them by the rushlight in coming down stairs.

Did you go to sleep after committing this act?—I went to bed, but could not sleep. I was awake when King entered the room.

In the presence of Almighty God, thinking I am on my death-bed, I hereby declare this to be my voluntary confession, to prevent innocent people being accused of this circumstance.

(Signed)

PHILIP NICHOLSON.

Mr. Justice Heath then summed up the evidence: he said he never knew a case more clearly proved. The jury immediately returned a verdict of guilty.

As soon as judgment was pronounced, the prisoner put in a paper, and desired it to be read: it was as follows:—

“ I acknowledge, with the deepest contrition, the justice of the sentence unto death which has been just passed upon me. Yet, alas! what satisfaction can I make to the afflicted family of my master and mistress, whom, without any provocation, I so barbarously murdered? I can make none beyond the declaration of my guilt, and horror of soul that I could perpetrate deeds so shocking to human nature, and so agonizing to the feelings of that worthy family. I do most solemnly declare, and I desire this declaration to be taken as my dying words, that I alone was the base and cruel murderer of my master and mistress; that I had no accomplice; that no one knew, or could possibly suspect, that I intended to perpetrate those barbarities; that I myself had no intention of committing those horrid deeds, save for a short time, so short as scarcely to be computed before I actually committed them; that booty was not the

motive of my fatal cruelties ; I am sure the idea of plunder never presented itself to my mind ; I can attribute those unnatural murders to no other cause than, at the time of their commission, a temporary fury from excessive drinking."

So anxious was Colonel Bonar to get from the wretch his very dying words, as to whether he had either motive or accomplice, that a person was deputed to ascend the platform after the cord was round the prisoner's neck, and to ask him the following questions :—

Q.—Now that you have not many moments to live, is all that you have stated, namely, that you had no motive that you can tell of, nor had you any accomplice, true ?

A.—All that I have stated is true.

Then there is no creature living on earth who had anything to do with the murder but yourself ?—No, no one.

You had no accomplices ?—None.

Had you any antipathy to either your master or mistress before you committed the horrid murder ?—Clasping his hands together as well as his heavy irons would permit him,—As God is in heaven, it was a momentary thought, as I have repeatedly declared before.

Col. Bonar inherited, at his murdered father's death, the family estates, and, dying in 1828, was succeeded by his eldest son, the present Ernest Augustus Bonar, Esq., of Camden and Elstead, a distinguished military officer in the service of the Emperor of Austria ; also the chief of the second branch of the Bonars, and the representative of Guthrie of Hawkerton, heritable falconer to the crown in Fife.

## A TRIAL FOR NON-ATTENDANCE AT DIVINE WORSHIP.

THIS was an action of a very novel as well as of a very extraordinary description, and excited a considerable degree of interest throughout the county. It was tried before Mr. Baron Graham at the Bedfordshire Lent Assizes, in 1816. The plaintiff was the Rev. Dr. Edward Drake Free, rector of Sutton, and the defendant was one of his parishioners, Major-General Sir Montagu Roger Burgoyne, Bart., of Sutton Park, in the county of Bedford: he was the eighth baronet of his line, and the father of Sir John Montagu Burgoyne, the present baronet. Dr. Free appeared in court, dressed in his canonicals, and was prepared to take part in the conduct of his own cause. The court throughout was crowded almost to suffocation. The jury, which was common, having been sworn,

Dr. Free addressed the learned judge on the bench. He observed, that he had been driven into court on the present occasion, in consequence of a motion made by the learned counsel on the other side for judgment, in consequence of his not having proceeded to trial at the last assizes; aided by the remarkable fondness of the attorney on the same side for money. It was not his intention to have taken any further steps in this business, because he had observed with satisfaction that Sir Montagu had begun to return to reason, by coming to church on the 7th of April last. The steps taken by the defendant's legal advisers, however, had compelled him to come forward; and in doing so, he felt he was vindicating the cause, not alone of his brother clergymen, who had been but too frequently maligned, but of the Church of England itself. He trusted the example which would be made of the defendant would operate as a warning to others, and prevent that inexcusable inattention to divine worship which, when occurring with a person of influence in the county, had the worst effects upon the habits and manners of the lower orders of

society. Having made this short preface, he should leave his counsel to proceed with the case, reserving the power to himself of occasionally addressing the court.

Mr. Baron Graham.—You must either leave the duty of conducting your case altogether to your counsel, or take it upon yourself. I shall be happy to hear you ; but it is not regular or consistent with the forms of the court to have you constantly interrupting your counsel, where he may not exactly meet your ideas.

Dr. Free.—Am I to be silent if I see persons coming forward, with the most audacious front, to commit perjury ?

Mr. Baron Graham.—'The rules of the court are imperative ; you will, therefore, exercise your own discretion in taking the cause into your own hands, or leaving it in those of your counsel.

Dr. Free.—If that is the law, I must abide by it. I have every confidence in the ability of my counsel.

—Mr. Jamesson, counsel for the plaintiff.—I had much rather Dr. Free would take the business in his own hands ; but if he leaves it with me, I shall exert my humble efforts in his behalf.

Dr. Free.—I shall leave my interests with my counsel.

Mr. Daniels then proceeded to open the pleadings. He stated that this was a *qui tam* action, brought by the Rev. Dr. Free, under the statute of the 23rd of Elizabeth, c. 1, to recover penalties from the defendant for neglecting to attend divine worship in the parish church of Sutton, in this county, or any other place of public prayers for nineteen months, whereby he became liable to pay a fine of £20 per month, amounting in the whole to £380.

Mr. Jamesson said, it became his duty to detail to the court and jury the particulars of this case. The plaintiff was rector of the parish of Sutton, and the defendant was lord of the manor in which the said parish was situated. The action was brought, as stated by his learned friend, to recover penalties under the statute of Elizabeth, for non-attendance at divine worship at his parish church, thereby, and in consequence of his example, spreading contagion around the country in which he resided. It was his wish to abstain altogether from a statement of the circumstances under which this action had been brought ; he should, therefore, confine himself to the simple observation, that the plaintiff, in coming forward as the accuser of the defendant, was solely actuated by a desire to enforce the laws for the observance of religious worship. The statute under which this action was brought, was the 23d of Elizabeth, c. 1,

by the 5th section of which it was enacted, that all persons in England absenting themselves from divine worship, either at their own parish church, or some other place appointed for public prayer, for one month, forfeited a penalty of £20. This penalty was equally divided into three parts, one of which went to the Queen, another to the poor of the parish, and the third to the informer. He should be enabled to prove, in this case, that the defendant had absented himself from his parish church for nineteen months; and having done so, he should be entitled to a verdict for the full amount of the penalties, or in all events for twelve months, which was the period within which the statute required the action to be brought. Witnesses were then called to prove the case.

Mrs. Margaret Johnstone deposed as follows :—I resided at the parish of Sutton on the 2nd of April, 1815. I attended the church every Sunday from that day to the first Sunday in April, 1816. I know the person of Sir Montagu Burgoyne, and during all that period I never saw him come to church. I am quite sure I attended church every Sunday. I sometimes saw Sir Montagu on horseback. In cross-examination, she said she was servant to Dr. Free, and had been so for four years.

John Northfield, parish-clerk of Sutton, corroborated the testimony of the last witness. He saw Sir Montagu come to church in April, 1816. He sometimes saw him coursing during the year 1815.

Mr. Jamesson here closed his case.

Mr. Sergeant Blosset said, if this was the plaintiff's case, his client was entitled to a verdict, as no evidence had been offered of Sir Montagu Burgoyne living in the parish of Sutton.

Mr. Baron Graham, however, considered this to be a mere oversight, and recalling the witnesses, they proved the fact alluded to.

Mr. Sergeant Blosset now addressed the jury on the part of the defendant. He said, that however unwilling he might be to trespass on the court by any very extended observations on this case, yet he could not help remarking, that the assertion made by Dr. Free, that he had stood forward as the champion of the Church of England and of the clergy, was not borne out by the facts. When a reverend gentleman came forward into a court of justice in his canonicals, and in the character of an informer, to support a *qui tam* action upon a statute which, although unrepealed, had been in disuse for upwards of one hundred and fifty years, he rather apprehended he would not be hailed by those whose interests he professed to represent, as a person likely to reflect much

credit upon their sacred character. That such conduct was consistent with the true spirit of the Christian religion, he believed no man of liberal feelings would allow. With regard to the statute on which this action was brought, he was willing to admit that it remained unrepealed; but, at the same time, it was proper to remark, that it originated in causes of a political nature, and was by no means applicable to times like the present. Its operations were meant only to apply to Roman Catholics and Dissenters, at a period when the Church of England might be considered as in danger. The principles of toleration which had since been disseminated, however, and the firm foundation upon which the Church of England had been established, were such, that no man possessing the slightest claims to liberality would venture to put the construction upon the statute which it had received from the reverend plaintiff in this case. Without entering on the construction of the statute, however, he should be enabled to meet the plaintiff in the most conclusive manner: for, in the first instance, he should be enabled to prove, that for several months of that period during which the servant of the reverend plaintiff had so positively sworn that she had regularly attended Sutton church, no divine service had been performed in the church at all: he meant the months of June, July, August, and part of September; during which months the plaintiff had so shamefully neglected his duties, that he had received a monition from the bishop of the diocese. He should also prove, that at other periods the reverend plaintiff was so inattentive to the performance of the religious service of his church, that his parishioners were constantly in a state of uncertainty as to the hour at which service was to commence, or whether it would be performed at all. Independent of this, it was no very pleasant thing for the defendant, when he did go to church, to hear a sermon delivered, which, instead of inculcating divine truths, was made the vehicle of personal abuse to himself. With these facts before them, the jury would be able to form a pretty correct judgment of the motives of this action. The next ground on which he rested with confidence, on the goodness of his own cause, he derived from the statute of Elizabeth itself; for by the statute of the 1st of Elizabeth, c. 2, which was embraced by the 23rd, it was enacted, that where the defendant in a *qui tam* action, such as that now before the court, could assign a reasonable excuse for absenting himself from public worship, and should afterwards conform to his religious duties, the action should be squashed. On this head of defence he should be enabled to prove that Sir Montagu

Burgoyne, who was a general in the British service, had returned from Gibraltar in 1814, in a most precarious state of health, and had continued thus afflicted down to the present day, a circumstance which he hoped, in addition to the uncertainty of the performance of church service at Sutton, would be considered a sufficient excuse for his non-attendance. With regard to his sentiments on the subject of religion, those would be best proved by the evidence he would adduce of its being his invariable practice to read the church prayers to his family every Sunday, when capable from the state of his health so to do: and if unable himself to perform that duty, to call upon Lady Burgoyne to read for him. He should also prove, that prayers were frequently read in his house by the Rev. Dr. Hughes, in his occasional visits to his family. There was another ground on which he was still more decidedly entitled to a verdict. This was to be found in the statute of the 1st James II., c. 4, whereby it was enacted, that any person offending against the statute of Elizabeth, by a non-attendance at divine worship, became exonerated from all consequences, by conforming to the rules of his church before judgment was obtained, and declaring himself publicly to be a faithful son of the Church of England. This Sir M. Burgoyne had done in the presence of the Bishop of the diocese himself, and was there ready again to declare openly in court his high veneration for, and accordance in, all the principles of the Christian religion.

Evidence was then called to support the defendant's case.

Lawrence Coxall, churchwarden of the parish of Sutton, proved, that Sutton church had been shut up from the 25th of June to the 3rd of September.

Thomas Brown, the other churchwarden, corroborated the testimony of the last witness, and proved that the church had been farther shut from the 15th of September to the 5th of November, no service having been performed.

Dr. M'Garth, a medical gentleman, proved the precarious state of Sir Montagu Burgoyne's health from his return from Gibraltar to the present moment, and the danger of his going to church at particular stages of his disorder.

Lucy Carrington, nurse in Sir Montagu's family, bore testimony to her master or mistress invariably reading prayers to the family on the Sunday when they did not go to church.



The Rev. Dr. Hughes occasionally visited Sir Montagu's family for weeks together, and always read prayers to the family when they did not go to church.

Mr. Baron Graham being of opinion that a reasonable excuse for the non-attendance of the defendant at his parish church had been proved, Mr. Serjeant Blossett did not call any more witnesses.

Mr. Baron Graham summed up the evidence. His Lordship abstained from making any remark upon the motives by which the plaintiff had been actuated in this action; but at the same time remarked, that no liberal mind could have construed the statute of Elizabeth in the manner in which it had been construed by him. He left it for the Jury to say whether a reasonable excuse had not been proved for the non-attendance of the defendant at church, and whether, in other respects, the case of the plaintiff had not received a complete answer.

The Jury without hesitation found the defendant not guilty.

## THE TRIAL OF ROGER O'CONNOR, ESQ., ON A CHARGE OF ROBBING A MAIL COACH.

ROGER O'CONNOR, Esq., was the fourth son of Roger Conner, Esq., of Connerville, in the county of Cork, and was born in 1763. He, and his younger brother, Arthur, adopted the surname of O'Connor, in consequence of a family tradition, that it was merely discontinued by an ancestor, to escape the persecution of the English government. The younger brother, Arthur O'Connor, was involved in the Irish rebellion of 1798: and became afterwards known as General Condorcet O'Connor: he is still living in France. Roger O'Connor married first, Louisa, daughter of Colonel Strachan, by whom he left one son, Roderick, now settled in Van Diemen's Land; he married, secondly, Wilhelmina, daughter of Mr. Bowen, of Bowenscourt, in the county of Cork, by whom he had, with other issue, a second son, Feargus Edward O'Connor, Esq., the well-known politician, and M.P. for Nottingham.

At the time of this trial, Mr. Roger O'Connor resided at Dangan Castle, near Trim, in the county of Meath, previously the seat of the Earl of Mornington, where that peer's famous son the Duke of Wellington, though actually born in Dublin, passed his early years of childhood.

Mr. O'Connor, after the conviction of some other men for the mail robbery, was himself tried on the 5th of August, 1817, at the Meath Assizes held at Trim. Mr. Justice Daly presided.

When the officers of the court had taken their places at the table, Benjamin Rikey, Esq., the Deputy Clerk of the Crown, inquired, as is usual in cases where more than one prisoner is arraigned for the same offence, whether he (O'Connor) would join with his alleged coadjutor in the felony, in the challenges? He answered, that he would not.

It was then intimated to him by Mr. Rikey, that he would be tried separately from Martin M'Keon, who had just arrived in the custody of the under gaoler, and taken his station in the dock. Notwithstanding this intimation, the trial of M'Keon was subsequently proceeded in.

Some desultory conversation here ensued, between the counsel for the prosecution and Mr. Bennet, one of Mr. O'Connor's counsel, in reference to the panel, and to the manner of the challenges; and after the usual formalities, the names of the panel, which were very numerous, were called over, on a fine of fifty pounds.

A considerable portion of time was consumed in recalling the panel, and owing to the many challenges made on behalf of the crown and prisoners. Notwithstanding the number that appeared to their names, the panel became exhausted, and it was now found necessary in order to complete the jury (four of the number of which were yet deficient) to select from those challenged, previously to the following gentlemen, who tried the issue, being sworn:—

John Ruxton, Esq., Henry Walsh, Esq., James Kellett, Esq., Henry Owens, Esq., William Henry, Esq., Christopher Carleton, Esq., John Ross, Esq., Frederick Dyas, Esq., Robert Sterne Tighe, Esq., Thomas E. Barnes, Esq., John Otway Cuffe, Esq., and James Somerville, Esq.

The four gentlemen last mentioned were those who had been objected to by the crown, but were called and sworn after the panel was exhausted.

The jury having been sworn, the prisoners were formally given them in charge.

It was suggested by Mr. O'Connor's counsel, that lists of the several witnesses to be examined on either side should be handed in to the judge in order that they might be commanded to withdraw, until respectively called upon to give evidence. In this arrangement the court and counsel for the prosecution readily acquiesced, and they, the witnesses, were ordered to retire accordingly.

The indictment having been read,

Mr. Sergeant Jebb (afterwards Judge Jebb), as leading counsel for the prosecution, stated the case against the prisoners. The learned counsel confined himself to a simple relation of the facts which grounded the alleged charges of felony, and adverted in brief terms to the evidence and circumstances upon which he was instructed those charges would be sustained. In reference to Mr. O'Connor, personally, he regretted, as much as any individual even amongst the friends of that unfortunate

gentleman, the unhappy situation in which he was placed ; and sympathizing, as he did, in common with those around him, in its painfulness, he declared he should feel the most sincere gratification in his acquittal.

Mr. Bartholomew St. Leger, of Dublin, coal-factor, was the first witness called. He was the person from whom the watch and keys, for which the prisoners were arraigned, were stolen, and he merely proved that the mail was robbed on the 2nd of October, 1812, at Cappagh-hill ; that he was a passenger ; and that these articles were taken from him.

The next witnesses were John Pollock, and Arthur Hill Cornwallis Pollock, Esqrs. Clerk of the Crown for the province of Leinster, who proved the record of the conviction of Richard Waring (brother to one of the approvers) for the mail robbery in question.

Michael Owens, the chief informer, was the next witness. He commenced by stating that he knew Mr. O'Connor, and was in his employment as labourer ; recollected the robbery of the mail on the day laid in the indictment ; was one of the party who robbed ; that previous to the robbery M'Keon called upon him, and stated that Mr. O'Connor wanted to see him ; that on his going to Dangan, Mr. O'Connor asked him whether he would join in robbing the Galway mail ; the witness replied he would, but had not arms enough ; that Mr. O'Connor said that he would provide arms ; that witness said he wanted men also, having only four or five at command ; that Mr. O'Connor mentioned that Heavy and Savage, two persons who had escaped from Trim gaol, and were then in the wood of Dangan, would join ; that after considerable consultation with Mr. O'Connor, it was finally agreed that the following should be the persons employed—the two Warings (Richard and Daniel), the two Owenses (Michael and John), Cahir and Shaw, Heavy and Savage, and the prisoner M'Keon. That it was settled that all these should assemble at Dangan on the evening of the robbery ; that they all did meet, with the exception of Daniel Waring (the other approver) ; that M'Keon was the person who opened the gate for them. After a consultation Mr. O'Connor brought witness down to the stable-yard, and delivered the necessary arms, together with 18 rounds of ball-cartridge, and a paper of gunpowder. Witness proceeded to state, that all the party, thus provided, with the exception of M'Keon, repaired towards Cappagh-hill ; Daniel Warren met them on the way. When they had arrived near their destination, witness despatched all the party but Shaw to the turnpike-gate to tie it up, and to take away any arms that might be in the turn-

pike-house The gate was secured, but before the house could be ransacked the coach approached. It was challenged to stop, on which the passengers called out to the guard to fire, and all the party but witness and Shaw retired. The latter fired upon the guard and killed him. He then mounted to the seat of the deceased, "threw him over," and took away the bags. All this time the witness stood at the head of the horses. The party that retreated soon came up, and proceeded to drag out the passengers and rifle their pockets. There was only one passenger respected, and he was a priest. Having accomplished their purpose, they all returned to Dangan. Mr. O'Connor was the person who received the party. On opening the gate he expressed a hope that they had had good luck. He then called M'Keon, who was his gate-keeper, and all the party proceeded to a private part of the demesne, termed Saint's Island: they there waited until day-light, and then proceeded to ascertain the nature of their booty. O'Connor sat on a ditch, and the remainder of the party on the grass under him. By O'Connor's direction they placed a hat in the centre of the group, and deposited all the money in it. O'Connor next proceeded to divide the booty. Each man's share of the notes taken out of the letters amounted to £450. Each person's share of the money taken from the passengers amounted to £80. O'Connor took the same proportions which the others got; but he compelled Heavy and Savage to pay him £100 each for the protection he had afforded them when they had broken out of Trim gaol: the arms they brought back to Dangan, O'Connor saying they would answer for the attack on the Enniskillen coach, which was then intended, it having been understood that it was conveying money to the army. Witness had been sworn to secrecy by O'Connor on the 1st of January 1812. The object was, that he should rob for arms, and become a Carder. A part of the oath pledged those who took it "not to pity the moans or groans of Orange-men, but to wade knee deep in their blood." O'Connor stated, that when he should have a sufficient number of Carders embodied, he would surprise the plans of Government. Witness had been tried for the mail-robbery, and murder of the guard, and was acquitted. He then went to the county Cavan, and was arrested and tried there for passing some of the notes which had been taken out of the mail, but was acquitted. He was afterwards taken up for a robbery in the county of Dublin, and was tried, convicted, and sentenced to death in February, 1817. About three weeks after the sentence he gave information. He had been at-

tended by his clergyman, and had made his confession in consequence of the advice he received from him. A Captain Mockler had called on him at Kilmainham, a few days previous to the day appointed for his execution. The Captain stated the object of the visit to be, to know whether he (the witness) had ever said that he intended to go down to Meath, to try whether he could get a shot at him (Mockler). Witness denied he had ever spoken of or intended any such thing. Mockler said he believed him, though he was told that he had such a purpose in view. Mockler then proceeded to make some remarks, from which witness understood that there would be some hopes of pardon if he made a discovery. Witness thereupon observed, that as for Mr. O'Connor he had always given him the best advice, and that he would not be where he was if he had taken the advice. Witness was asked, whether it was true that O'Connor had given him the advice, and he answered it was not true. He was then asked by a juror, whether at the time he made that statement to Mockler, his clergyman had not been attending him, and for a considerable time previous, and whether he had not received the sacrament from him; to which he replied, that his clergyman, Dr. Lube, had been attending him nearly three weeks, and that he had administered the sacrament to him different times. The day of execution was drawing near, and Dr. Lube had held out no hopes of his being saved: and that notwithstanding all these circumstances he told the falsehood to Mr. Mockler, not wishing to implicate Mr. O'Connor. The day after the conversation with Mr. Mockler, Dr. Lube had called on him. Witness then told him he had something particular to communicate; that hopes of pardon had been held out to him, if he would give information, and wished to know whether it would be criminal in him to give information against his accomplices. Dr. Lube answered it would be doing a good act to rid the country of such characters, and advised him to give the information. Witness then wrote to Captain Mockler, who came to him, and he disclosed everything. Mockler was accompanied by Alderman Darley, who took witness's informations.

On his cross-examination by Mr. Bennet, witness said he knew there were such places as hell and heaven—that he expected to go to heaven. He was at so many robberies that he could not tell the number of them. One of the blunderbusses found at Mr. O'Connor's had been taken from the house of Richard Warren, and he was present on the

occasion. He assisted in taking the other blunderbuss from the house of Garrett Dun Richardson, in 1812. He was also present at the carding of a man named Walsh. He held Walsh while Warren carded him. The reason of his being carded, was, his having been understood to be a bad man in the parish, and one who would not contribute to the poor. He did not doubt but Walsh was a Catholic. He did not mind what his religion was, though the oath administered by Mr. O'Connor bound him not to mind the moans or groans of Orangemen. He did not know whether himself or Waring (the other approver) was the greater villain. He was robbing since the age of twenty-one ; he is now twenty-seven, and thought he deserved hanging ; it would be better for a man to be hanged than take a false oath ; it would, nevertheless, be better to break the Carder's oath, which he had taken, than keep it. He admitted, he was never employed to work directly by Mr. O'Connor, but was employed by M'Keon, who was Mr. O'Connor's task-man ; M'Keon was not present at the dividing of the booty, being employed in keeping the other workmen from the place where the booty was divided. M'Keon had advised him to have nothing to do with mail robberies, as it was a bad business, and would cost him his life. When he first called on Mr. O'Connor he was not bound to secrecy. Mr. O'Connor merely asked him whether he would join in robbing the mail ; he was not in the habit of going into Mr. O'Connor's parlour ; when he met him on the demesne he generally put his hand to his hat for Mr. O'Connor ; when he took off his hat, Mr. O'Connor would desire him to put it on again. The party proceeded to open the letters, &c. about five in the morning, and had finished at eight ; most of the party remained in the demesne of Dangan until evening. Three of the men had been hanged since the robbery. They died stout men, and gave no information against Mr. O'Connor, although they were not very stout in running away at the time of the attack on the mail. He believed he was the stoutest man amongst them, but he was not appointed captain of the gang. He had no more command than others. He had taken potatoe-ground from Mr. O'Connor ; Mr. O'Connor would not allow the potatoes to be removed until they were paid for ; was not at home when the refusal was given ; he believes his brother-in-law passed his note for the price of the potatoes ; Mr. O'Connor afterwards processed his brother-in-law for the amount of the note. He should not be well pleased with a man who would not serve his family as well as himself. Mr. O'Connor and he used

to have religious discourses. A juror asked, "what religious discourses?" The witness answered, "Carding and taking of arms!" Witness was again asked whether he could give a guess as to the number of crimes he was implicated in, and he answered, he could not. The examination of this witness did not close until within ten minutes of four o'clock.

Richard Waring proved the robbery of his house of a blunderbuss. (A blunderbuss was produced to witness, which he identified as the one of which he had been robbed.)

Garret Richardson examined.—His house was robbed, in 1812, of a blunderbuss. [A blunderbuss was produced, but witness could not identify it. It was like one which he possessed, but he could not positively swear it was the same.]

Mr. Wallace, as counsel for Mr. O'Connor, said, he was willing to admit it was the blunderbuss which was stolen from the witness, but that he would show how it got into the possession of Mr. O'Connor's family.

Mr. Sergeant Jebb observed, that the admission of the learned counsel was wise and candid

Thomas Thompson, Esq., solicitor to the post-office, stated, that in consequence of information which he received through Owens, he went to Dangan, in company with Alderman Darley and Captain Mockler. He proceeded to the house of the younger Mr. O'Connor, on the Dangan demesne, and situated at a short distance from the prisoner's house, and there found the two blunderbusses which had been exhibited to the last witnesses. He found them in the bed-room of Mr. O'Connor, standing against the chimney, in a conspicuous situation, and not in any manner concealed. He received information concerning a watch, and seized an article of that description, which he had met with, but found on examination it was not such a one as was described to him: he therefore returned it. This witness next proceeded to state, that he met Mr. O'Connor at the assizes of Naas, where he attended to prosecute the Owenses. He observed, in a jocose way, that "wherever the Owenses were to be tried, he was sure to meet Mr. O'Connor." Mr. O'Connor replied, that "they were as great vagabonds as existed." The witness mentioned, that notwithstanding that assertion of Mr. O'Connor, he appeared at the trial, and gave these persons a general good character; which surprised witness so much, that he had him cross-examined as to the fact of his having had the conversation with him respecting these



individuals previous to the trial. Mr. O'Connor, as witness affirmed, had not denied that he talked of the Owenses as being very bad persons, but that he was not serious when he spoke of them. Witness got nothing in the house of Mr. O'Connor, jun., but the blunderbusses ; and that, as to the house of Dangan, the searching of that place was left to Alderman Darley.

On being cross-examined by Mr. Wallace, he repeated that the blunderbusses were quite exposed.

Richard Waring, the other approver, was examined at much length. A great portion of his evidence relative to the circumstances of the robbery, &c. agreed with that given by Owens. He said that he was not present at the consultation at Dangan, having had to go for a blunderbuss which he had concealed in a bog. He stated, that on the return of the party from the robbery, Mr. O'Connor had opened the gate for them, hoping that they had good luck ; and that he (Mr. O'Connor), had held the blunderbuss of one of the party while he went into M'Keon's house to light his pipe. He distinctly affirmed that M'Keon advised him to cease robbing houses for arms, &c., as it was an unprofitable pursuit, and take up the better occupation of mail-robbing. He stated that he, as well as his associate Owens, was concerned in innumerable criminalities. He had taken the Carder's oath at the instigation of Mr. O'Connor, but his description of it was different from that which Owens had given. It bound persons, according to his statement, merely to " support anarchy, and put down monarchy," He was present at the carding of Walsh, who had been held while the witness performed with his own hand that operation. Walsh, however, was not left long in his hands. He said he had " only two or three touches at him," the instrument of torture being given to abler and better hands. He operated on Walsh's back—his successor on the backs of Walsh's legs. His statement of some of the circumstances of the division of the booty was similar to that of Owens. He alleged, however, that the adjustment did not take place until about five o'clock in the evening, and that from the time Mr O'Connor placed himself on the ditch until that hour, he took no refreshment. Mr. Wallace asked, whether the rest of the gang had not taken refreshment. Witness answered they had. Then, said Mr. Wallace, it appears you acted very unceremoniously towards your captain. On being again questioned about M'Keon's advice relative to robberies, he admitted that it was against all crimes of that description, as they would only lead to the

gallows. He was reminded by Counsel that he gave a different statement before, to which he replied that M'Keon advised both for and against robberies.

John Allen, farmer, was the next witness. He remembered the 4th of October, 1812. He saw Mr. O'Connor on that day, having received a note from that gentleman, desiring him to call on him. Mr. O'Connor asked whether he had not heard of the mail-robbery of the 2nd, and he answered, he had. He then asked, what would witness think if he heard that the mail had been found on Dangan demesne? Witness answered, he should be sorry to hear it was the case, as, from the circumstance of a bag having before been found there, it would have a bad appearance in the country. O'Connor then brought him into a room, and shewed him, lying on a table, the mail bags, some newspapers, lottery tickets, broken notes, &c. He further asked witness, whether he could keep a secret? To which he replied, that he never abused any confidence that was reposed in him. O'Connor then asked him, if he had not been security for the gaoler of Trim, and whether he was not, in consequence, likely to be a sufferer by the escape of Heavy and Savage? Witness replied, he was security. O'Connor then said, that he had reason to know that Savage was lurking about Dangan, and that he would put witness in the way of securing him. On being asked whether any oath was proposed to him by O'Connor, he said there was not. O'Connor had a red book in his hand at the time of asking him whether he could keep a secret, but proposed no oath. O'Connor had asked him what he would advise him to do with the bags, and witness answered, to send them to the post-master of Summerhill.

On his cross-examination, this witness stated, that he considered the secret he had to keep was, that Mr. O'Connor had interfered in procuring the re-taking of Savage. He further asserted, that he took Mr. O'Connor's interposition on this occasion to be an act of kindness, and intended to shew his gratitude to the witness, and his brother-in-law, the gaoler, for acts of civility received, while he (Mr. O'Connor) was confined in Trim gaol for an assault, of which he had been convicted.

The Rev. Dr. Lube was next called.—Being asked had he given any advice to Owens on the subject of the present prosecution, said, that any professionally private communication he had with Owens he was not at liberty to disclose, meaning, as we suppose, in his capacity as a clergyman; that Owens had asked him (Dr. Lube) "if it would be criminal in him

(Owens) to make a discovery in order to save his own life, for that proposals had been made to him to that effect?" that he (Dr. Lube,) asked Owens, had he any discovery of importance to make? that Owens answered in the affirmative; that he (Dr. Lube) immediately laid a solemn injunction on Owens not to name the parties to him (Dr. Lube), inasmuch and for that it did not belong to him to be made acquainted with it; but added, that if he (Owens), knew of any gang of robbers who were disturbing the peace of the country, he (Owens) would "do well" to "divulge it," and that, provided he "adhered to truth," he (Dr. Lube) saw nothing criminal in it.

[This conversation, Dr. Lube said, took place in the presence of a third person, one Reynolds; and after, as above stated, proposals had been made to Owens to save his life.]

Dr. Lube, having been asked how long he had been attending Owens after his conviction, before the above conversation took place, replied, about three weeks; and to a question, did Owens at that time entertain any hopes of a reprieve? replied, he did not; nor did he (Dr. Lube) hold out any hopes to him.

Question by Mr. Leonard M'Nally (a distinguished Irish Barrister, and author, by the way, of "The Lass of Richmond Hill" and of a work on the Law of Evidence.\*)—Did witness believe it was with a view to save his life that Owens gave the information? Dr. Lube said, he 'verily believed it was.'

Robert Gilbert, a Dublin police officer, stated that he arrested Mr. O'Connor, at Palace Anne, in the county of Cork, the house of Mr. Bernard, a magistrate of that county. He shewed the warrant to Ber-

\* Sir Jonah Barrington, in his "Personal Sketches," gives the following amusing history of this barrister:—"Leonard M'Nally was a great poetaster; and having fallen in love with a Miss Janson, daughter of a very rich attorney, of Bedford-row, London, he wrote on her the celebrated song of "The Lass of Richmond Hill" (her father had a lodge there). She could not withstand this, and returned his flame. This young lady was absolutely beautiful, but quite a slattern in her person. She likewise had a turn for versifying, and was therefore altogether well adapted to her lame lover, particularly as she never could spare time from her poetry to wash her hands; a circumstance in which M'Nally was sympathetic. The father, however, notwithstanding all this, refused his consent; and consequently M'Nally took advantage of his dramatic knowledge, by adopting the precedent of Barnaby Rudge, and bribed a barber to lather old Janson's *eyes* as well as his *chin*, and with something rather sharper, too, than Windsor soap. Slipping out of the room, whilst her father was getting rid of the lather and the smart, this Sappho, with her limping Phaon, (M'Nally was lame) escaped, and were united in the holy bands of matrimony the same evening; and she continued making, and M'Nally correcting, verses, till it pleased God to call them away. This curious couple conducted themselves, both generally and towards each other, extremely well after their union. Old Janson partly forgave them, and made some settlement upon their children."

nard. When Mr. O'Connor saw it, he said it was illegal, inasmuch as the word "felonious" was not in it. He believed Mr. O'Connor made that observation for the purpose of shewing the offence with which he was charged wasailable. Witness thought it wasailable. He did not know against whom he had the warrant, until he went to Cork, and thought, when he saw Mr. O'Connor, and the respectable house he was in, he might have made a mistake as to the person. On asking Mr. O'Connor whether he was of Dangan, he answered he was.

On his cross-examination this witness admitted Mr. O'Connor was repeatedly out of his custody. He thought that if Mr. O'Connor had resisted, he would have been unable to bring him to Dublin, though he was determined, if there had been any serious opposition, to have shot Mr. O'Connor. While Mr. O'Connor had been out of witness's custody, he was in that of a Captain White. Witness was asked whether he had not brought handcuffs with him from Dublin, and was not of opinion that he would render himself agreeable to persons in power if he had treated his prisoner with indignity. He answered, that bringing the handcuffs was accidental, as when he left town he knew not whom he was going to arrest. He received no instructions respecting treatment when he set out.

The case on behalf of the Crown having closed, Mr. Leonard M'Nally, as counsel for M'Keon, said it was not necessary for him to call a single witness.

Mr. Wallace, as leading counsel for Mr. O'Connor, said he would pursue the same course as Mr. M'Nally, if life only was at stake; but here, the honour of a gentleman, which was more dear than life itself, was at stake, and for that purpose alone he would call witnesses, by whom Mr. O'Connor's character would be so purged, that malice itself dare not raise its shaft against him.

Francis Burdett O'Connor, Esq. (third son of the prisoner O'Connor, and afterwards an officer in the Bolivian army) was then called. The two blunderbusses above spoken of were produced; he stated that he had found them in a rabbit hole in the demesne of Dangan, in the November following the mail robbery; they were then in their present state without locks. He brought them to a house occupied by his brother and two sisters. Subsequently his brother removed to a new house, and these blunderbusses were brought away, he supposed by the workmen, with other lumber out of the store-room in which they were originally de-

posited, and put into the room where his brother slept, in the new house, and laid against the fire place. He was present when the plundered mail-bags were discovered in the wood of Dangan, and information of the circumstance was sent to the post-office.

There was no cross-examination of this witness.

Leonard M'Nally, Esq., deposed, that he attended at the Naas Assizes, when the Owenses were tried. Mr. O'Connor was there, and was examined as a witness. He said he once thought the prisoners were persons of good character, but had changed his opinion of them.

Mr. Bernard M'Guire, attorney, corroborated Mr. M'Nally's testimony.

John Pratt Winter, Esq., a magistrate of the county of Meath, stated, that on his return from the fair of Ballinasloe, after the mail robbery, he had used active endeavours to discover the perpetrators of the deed. He received information that M'Keon was concerned, on which he proceeded to the house of Mr. O'Connor. Mr. O'Connor immediately went with him in search of M'Keon, and having found him where he was superintending some work, they closely examined him, and proceeded to his house, and made diligent search, without being able to discover anything that could tend to show he (M'Keon) was in the smallest degree concerned in the outrage. Mr. O'Connor afterwards called on him, and offered to give all the aid in his power in bringing the robbers to justice though he seldom interfered in matters of the kind.

Michael Parry, Esq., agent to Mr. O'Connor, deposed, that on the 2nd of November, 1811, he had remitted to Mr. O'Connor £4793; that on the 17th of August, 1812, he remitted him £1400: and that on the 27th of September, 1812, he sent him £500 for the purpose of purchasing cattle at the fair of Ballinasloe. He had enclosed the £500 in a letter to Mr. O'Connor, and had written to the Bank of Ireland, making them acquainted with the circumstance, and desiring them not to pay the notes to any order but that of Mr. O'Connor. His letter to Mr. O'Connor was then in court, and he said he would, if permitted, refer to it. The letter was handed to him, and he read from it a mention of the enclosure of the money. Since the commencement of his intercourse with Mr. O'Connor, their money-dealings amounted to £25,000, and that at the time of the alleged robbery he would have transmitted him £2000 if he wanted it. In the course of his dealings he never met with a more honourable or upright man. Witness further stated, that the amount of Mr. O'Connor's rental in Cork was £1800 per annum.

Jeremiah Keller, Esq., barrister-at-law, stated he had known Mr. O'Connor for a great number of years, during which they had been intimate friends. Mr. O'Connor was formerly of the Munster bar. Speaking generally of his character, he conceived it to be excellent. He would mention an instance of his disinterestedness and generosity. He had married a lady in early life without a fortune, notwithstanding which he had made a most liberal settlement upon her. Witness knew him afterwards to support the lady's father in a creditable style, which he continued to do until his death. He thought it next to an impossibility that he would be guilty of such an act as had been imputed to him.

Sir Francis Burdett, Bart., said, he was acquainted with Mr. O'Connor since 1796, about the period he (Sir Francis) had returned to England. He always entertained the highest opinion of his honour and principles. On being asked whether he had any money transactions with Mr. O'Connor, he answered it was unpleasant to allude to such matters, but as it was conceived to be useful to Mr. O'Connor's defence, he would mention, that embarrassments, which he need not particularize, had rendered different small advances to Mr. O'Connor necessary, and of which he, Sir Francis, had never made any memorandum. A circumstance having, at one time occurred, which he would not then explain, he had written to Mr. O'Connor to place £400 to his credit at his banker's. Mr. O'Connor in answer wrote to him, saying he had not a demand for £400 but £1000., and enclosed him his bond for that amount. On witness's next meeting him, he told Mr. O'Connor he had entirely misunderstood his intentions, and returning the bond, desired him to pay the money at his convenience. Witness said he was once before in Ireland for a short time, and that his present visit was for the purpose of serving Mr. O'Connor as far as he was able. He was then asked from what he had known of Mr. O'Connor, and calling him as he did his friend, what were his feelings on hearing of the charge of felony which had been preferred against him.

Sir Francis replied with great emphasis, "I thought I should have sunk into the earth." Counsel observed that it was well known the witness was a gentleman of large fortune, and asked him whether or not he would have advanced him money if he had applied to him, at the period of the imputed offence? Sir Francis replied, "I know not the sum of money that I would not have placed at his disposal if he had applied to me."

The learned judge (Daly) addressed a few words to the jury. He said.

there was certainly legal evidence to go to the jury ; but, in the course of his experience, he never knew a charge so strongly rebutted as that which it was produced to sustain. If the jury felt any reasonable doubts, he would recapitulate the evidence ; but if they thought with him, it was unnecessary for him to do so.

The foreman of the jury replied, that himself and his brethren were all of his lordship's opinion.

The verdict of acquittal was immediately pronounced ; it excited the extremest joy—the manifestations of it in the court were of an unusual kind, the waving of hats, handkerchiefs, and sticks. The effect without was instantaneous. The town caught the enthusiasm of the auditory within, and shouts of joy interrupted, for a considerable time, the closing of the scene.

Mr. Roger O'Connor died at The Ovens, in the co. of Cork, in 1835.

### A CURIOUS EJECTMENT CASE.

A MORE singular case than this “ which in legal phraseology bears the name of Doe, on demise of Sherwood, alias Symons, and others, *v.* Parker and others,” has seldom occurred. It was tried at the Cornwall Summer Assizes, 1821. The facts were as follows :—In the year 1768, the head of a respectable family, in the county of Cornwall, of the name of Symons, whose residence was at Hatt-court near, Calington, made his will, leaving his estates to his eldest son William, with remainder to his second son Nicholas—remainder to his two daughters, Elizabeth and Mary Anne (the two defendants in possession), with remainder over to the right heirs of the testator. The testator died in 1766, when his son William succeeded him. The second son, Nicholas, was about that time articted to Mr. Charles Rashleigh, a respectable attorney residing at St. Austle, and had, during his clerkship, conducted himself with such propriety, that, at the expiration of it, arrangements were forming for a partnership between him and his master. Nicholas Symons, however, had unfortunately become attached to a young woman of St. Austle, of no very good fame, and had intended to marry her ; but this being violently opposed by his family, as well as by Mr. Rashleigh, he was induced to promise that he would not so commit himself. In the latter end of the year 1782, Nicholas Symons went to London to be admitted an attorney of the Court of King’s Bench, and a solicitor of the Court of Chancery. He was there received with every attention by Mr. Rashleigh’s brother, and corresponded from time to time with Mr. Rashleigh himself. The following was the last of the letters which Mr. Rashleigh received from him :—

“ Dec., 1782.

“ Dear Sir,—Your favour of the 19th ult. I received in due time, for



which I return you my most sincere thanks. The contents I perused with very great attention, and was, as you may suppose, amazingly hurt on finding that the matter you alluded to was not settled ; and, my dear sir, what is still worse, and what you will be astonished to hear, is, that I cannot by any means compose myself or get rid of that love or passion, as you may please to term it, I professed for the object, notwithstanding the interval of time, the distance I am removed from her, and the advice of my friends and relations. The latter are in possession of all the facts, and their astonishment and displeasure they have expressed to me. My situation I cannot expect you or any of my friends to pity. I have been my own enemy, and have brought all my misery on myself, and my conduct I am sensible every person must condemn. My reflections are almost too great to bear, and grieve me beyond expression, when I compare my present situation with that of three months since. Then I anticipated the greatest pleasure, and had nothing in view but happiness : now I have nothing but misery, having already forfeited the little respect my acquaintance had for me, made the world entertain the meanest opinion of me, and gained the displeasure of my friends and relations, all which, I am satisfied from the hints I have received, I have incurred. From these assertions you will probably suppose that I mean to break the promises I made you before I quitted St. Austle ; but you may rest assured that I will not, and all I have to hope for is, that satisfaction may be made to the party injured ; if that is done, it will, in a great degree, make my mind more easy, though I am convinced I shall never experience happiness more ; but out of respect and gratitude to my relations, I am in duty bound to fulfil my promise, whatever may be the event. Now, my dear sir, believe me when I assert, that I am one of the most miserable beings ; what to do, where to go (for I am determined to quit town in a day or two), or what will become of me, I know not. To return to St. Austle, or even to Cornwall again, I am much afraid I never shall have resolution to do ; and after what passed, I don't think myself worthy, nor will it be possible for me, to embrace the offer made by you, and to form that most desirable and honourable connexion which I flattered myself would have made me happy ; indeed, every person from this declaration will certainly think me insane, not to forget all that has passed, and to pursue the path pointed out to me, but sorry am I to say, that I cannot prevail on myself so to do, and that I should make such an ungrateful return for the many favours conferred upon me, and the very

great friendship I have ever experienced from you, which, with the many other obligations I am under to you, I shall never forget, but always retain with a due sense of esteem. All I have to add at present is, desiring you and Mrs. Rashleigh to accept my sincere thanks for the many favours so undeservedly conferred on me, and my good wishes and sincere regard to you and yours, and to be remembered to all that think it worth their while to inquire after me. In a week or ten days you may expect to hear what has become of, dear sir, your much obliged and very humble servant,

“NICHOLAS SYMONS.”

From the receipt of this letter Nicholas Symons was never heard of more; and it was supposed that he had been his own destroyer. In the early part of the year 1783 a stranger appeared in Liverpool, calling himself Nathaniel Sherwood, who purchased a chariot and horses, and established the first public conveyance in that town. Sherwood succeeded so well by his attention and civility, that he enlarged his concern, and set up a diligence from Liverpool to the Duke of Bridgewater's Canal, near Warrington, and was getting rapidly forward in life, when he was unfortunately drowned in the ferry-boat from Liverpool to Runcorn Gap in the month of July, 1802. He had married a servant of the inn where his diligence put up, and had several children, the eldest of whom was the lessor of the plaintiff. In 1805 his widow married a person of the name of Boore; and about that time a chest of Sherwood's was looked over, but no notice was taken of its contents. The lessor of the plaintiff had not been so fortunate as his father, but had become bankrupt under circumstances not very creditable to him; and his assignees also laid a demise, and now contested his rights. In 1817 the chest was again examined by the son and his sister, and among other things were discovered the admission of Nicholas Symons as an attorney, and his admission as a solicitor; an account between him and his mother during his minority; and other papers, which ultimately led to an inquiry, which terminated in the belief of the identity of Nicholas Symons and Nathaniel Sherwood; and in 1819 the present ejectment was brought against the defendants, who had been in possession of the property ever since the month of May, 1802, when William Symons died, Nathaniel Sherwood having been drowned two months subsequently.

To connect Nicholas Symons, who disappeared in 1782, with Nathaniel Sherwood, who died in 1802, was apparently no very easy task; but Mr.

Rashleigh and others, who had known Nicholas Symons in Cornwall, described him as a gentlemanly young man, five feet five inches high, dark complexion, light hair, with dark thick eyebrows, which gave him a remarkable appearance : they also spoke to his habit of biting his nails. Several witnesses were then called, who knew Nathaniel Sherwood at Liverpool, and they gave the same description of him. But the most important piece of evidence was the handwriting ; the Cornish witnesses deposing, that the papers produced from Liverpool, as the writing of Sherwood, were, in fact, the writing of Symons ; and the Liverpool witnesses declaring the letter before given, and other things, to be in the handwriting of Sherwood. One of the witnesses also spoke to the fondness of Symons for horses.

Mr. Sergeant Pell, for the defendants, called no witness, but rested his case upon the improbability of a man of so delicate a turn of mind as Symons, so degrading himself as to become a hackney-coachman, and to suit himself to that mode of life. He also urged the improbability of the papers in the chest having so long remained untouched, when they had been examined in 1805, and contended that it was a conspiracy on the part of Sherwood's family, animadverting very strongly upon the evidence of Boore, the second husband of Sherwood's wife, who had successively been a midshipman in the navy, at the head of a press-gang, an upholsterer at Liverpool, a publican at Bungay, in Suffolk ; a fishmonger in Long-lane, Smithfield ; again a publican in Queen-street, Lincoln's-inn-fields, and now residing at Ryde, in the Isle of Wight, under the name of Short. This latter circumstance Boore accounted for by saying, that he had become security for the appearance of his son-in-law, who was indicted with others for a conspiracy to effect a fraudulent bankruptcy, and that he was afraid of the consequences.

Mr. Justice Best (afterwards Lord Wynford) summed up very strongly for the plaintiff, in whose favour the jury, after a careful examination of the several writings, returned a verdict.

The property thus recovered was of the value of twelve hundred pounds a-year.

## THE BOUNDARIES OF CRANBORNE CHASE.

THIS was an action brought by George, second Baron Rivers, of Strathfieldsaye, and of Ludley Castle, against Thomas King and two other persons. The case, though somewhat prosy in its details, is curious in this: it was a suit instituted to ascertain the boundaries of the Chase of Cranborne; and involved, on one side, the most extensive royalty that was ever claimed by any subject, or perhaps by any sovereign prince; and on the other, the independent enjoyment of their property by all the owners of the soil throughout the range of that wide domain.

The action was tried at the Wilts Summer Assizes of 1816. The pleadings were shortly explained by Mr. Baily, who stated, that it was an action brought against the defendants for entering Cranborne Chase in a certain part, within that county, called Trow-down, and with their dogs, against the will of Lord Rivers, chasing and hunting his deer; which trespass the defendants had justified, on the ground that Trow-down was the freehold estate of the defendant King, that the deer was wrongfully eating his grass there, and that he and the other defendants, his servants, with his dogs, drove them off his land; to which plea the noble plaintiff had replied, that Trow-down was part of his Chase of Cranborne, and that his deer were lawfully feeding there.

Mr. Sergeant Lens, in an eloquent address, explained to the jury that the question upon these pleadings involved the right of Lord Rivers to exercise the privilege of his Chase, not only upon the land in which the defendants in this case were supposed to have trespassed, but over a very enlarged tract of country in the three counties of Dorset, Wilts, and Southampton, in all of which, during the lapse of many centuries, far beyond the reach of memory or tradition, the noble lord, and all those

from whom he claimed, had exercised those privileges. He said, that the rights of the forest and Chase, now to be exerted over this vast district, however obnoxious they might be to the feelings of those whom they affected—however injurious to the interests of individuals—were grounded in the ancient constitution of England, and were protected by that law which held every right as sacred, and would never permit the irritated feelings of men to justify the invasion of any right. He said, it was without dispute that Lord Rivers was entitled to the ancient royalty of the Chase of Cranborne, and that within that Chase, however straitened or extended, his deer were entitled to run without molestation; that the only question to be now determined was that of boundary; that all objections to the oppressive nature of his right, and all clamour respecting its origin, or the detriment which others sustained from its exercise, would be misapplied to the case. The jury had nothing to determine but a dry question of boundary; and he would undertake to define the boundary now claimed by his noble client, wide as it would appear, with as much certainty and precision as that of any parish in the county. He should be able to define such boundary, not merely by evidence of the exercise of all the privileges incidental to the Chase in various parts of that extended district in times of high antiquity, and in modern times down to the moment of his addressing the jury, but by ancient decisions of courts of competent jurisdiction, in proceedings by which the exercise of such privileges was resisted and such boundary disputed. The rights were always deemed oppressive by those whom they affected, and many attempts had been made to confine their applications to narrower limits, but such attempts had led to those judicial confirmations of the extended claim of the Chase; and unless those proceedings were of no avail—unless the public records of them which remained as the land-marks of property could be reversed—he rested upon them with confident assurance that he should succeed in behalf of his client. The manor of Cranborne was indeed in the county of Dorset, but not within the narrow limits which the defendants would assign to the Chase claimed as appurtenant to that manor. He admitted that in some ancient documents, the Chase was described as situate in the county of Dorset, but that was because the manor to which it appertains was in that county; still the Chase so appurtenant might be, and its narrowest bounds were, in fact, admitted to be much more extensive. The boundary which he claimed had been defined by a map made under the direction of the King's

Exchequer in the reign of James the First ; a Court of the Chase had always subsisted, and had always exercised its jurisdiction over persons residing without the limits which the defendants would endeavour to prescribe to the owner of the Chase ; and chiminage, which was a toll payable by persons entering the Chase at a certain period of the year, had always been received at the extreme point of the extended boundary. The rights of Lord Rivers might seem doubtful, from the moderation with which they had been exercised ; in the outward parts of his franchise they had, during a long period, hardly been felt, and might almost be forgotten ; indeed, they remained to the noble lord, not as a source of profit—not as a means of practical injury to any one—but as a mere honour, and that of great expense to him—as a feather of high estimation—which, however lightly it might be regarded, would, if established as a right, be entitled to protection ; and he had no doubt, if so established, would be considered by the jury as weightier in the scale of justice than all the eloquence and all the clamour with which it might be questioned.

The proof of the plaintiff's title, by ancient documents, consisted of grants in the 15th year of James I. to Lord Salisbury, in tail, and subsequent conveyances through several families down to the family of Lord Rivers. They produced also several very ancient proceedings in the reigns of our earliest kings, in which agreements were made between the proprietors of the Chase and various persons, granting them privileges in Wiltshire and in Dorset, within the Chase. In the 8th Edward I., 1220, a writ of *quo warranto* had issued into Dorsetshire, respecting the Chase, against Gilbert de Clare, Earl of Gloucester, in which it was alleged by the king's attorney-general, that, by a perambulation made while King John was Earl of Gloucester, the Chase had been marked out by certain known bounds (viz., the bounds this day claimed), and those bounds were then adjudged to Gilbert de Clare. In the 15th James I., a decree of the king's Court of Exchequer assigned to the Earl of Salisbury the bounds now contended for in Dorsetshire, Wiltshire, and Hampshire. In the 8th Charles I., a similar decree passed in the Exchequer. The rolls of the Chase Court were produced, by which persons were fined for offences in Wiltshire ; the accounts of the stewards of the Chase proved that such fines were paid, and that chiminage had anciently been levied. It was proved that these courts were held at Cranborne and at Wimborne St. Giles, in Dorsetshire, far without the narrower limits of the Chase, and at Rushmore, in Wiltshire ; and that recoveries of the

Chase had at various times been suffered in Hampshire and in Wiltshire.

On the following morning Mr. Sergeant Best (afterwards Lord Wynford) entered upon the defendant's case. He desired the jury to consider what it was for which the plaintiff contended,—namely, a right to feed his beasts of the chase over 500,000 acres of land in three counties, which included an extent of country more than one hundred miles in circumference. He claimed that in that wide range no man should plough the land to the detriment of the deer; and no man should raise a fence to the exclusion of the deer; that the growth of wood should be protected only for the benefit of the deer; that if any man turned his sheep into his own woods, they should be impounded by the owner of the deer; that the growth of timber should for ever be prevented by the browsing of the deer; that the rights of the chase should in all things be preferred to the interests of man; that all cultivation should be subservient to those rights, and that the benefit of the deer of Lord Rivers should be paramount to all the rights of property, and make the industry of the husbandman of no avail. He contended, that this claim was in its nature so oppressive, that it could hardly be consistent with any law: the King of England, putting all his forests together, could not exercise such privileges over an extent of soil nearly so great; that it was six times as large as the New Forest; that it was not credible; nay, he contended that it was not possible that such a right could ever have been given by the worst of our kings to any subject whatsoever, and that, if given, it was contrary to the great Charter of the Forest, and could not subsist. He pointed out, that this odious claim, so destructive to agriculture and the best rights of the community, was made not for the profit of any one; it was admitted to be an expensive honour; it was a mere feather, of no value to its owner. He was confident that that feather would now be plucked from the wing of Lord Rivers; and he doubted not that the noble lord would soon renounce the last portion of that which was now claimed for him, and abandon altogether a right which could never be of benefit to him or to his family, and must be always in its exercise most hateful and most oppressive to those who were subject to it. The judicial decisions on which the claim of the plaintiff rested were not the verdicts of juries, but the decisions of courts in the worst times of our history, which had dared to proceed in defiance of the verdict of juries: no proprietor of the Chase had in former times ventured



to submit his claim to the decision of a Wiltshire jury. He had no respect for such judgments, obtained in earlier times, to establish such odious rights : they were void from the beginning, as being contrary to the great Charter of the Forest, and the ancient rights of Englishmen. They were among the grievances which had prepared the way for the glorious revolution of King William. He doubted not that this day the verdict of a jury of Wiltshire would set them all aside. The decision in favour of Lord Salisbury, upon which the plaintiff's claim mainly depended, was fraudulently obtained ; the verdict of a jury had just then overturned the rights ; Lord Salisbury was then tenant in fee of the Chase : he was High Treasurer of England, and the minion of the reigning sovereign ; the judges were dependent upon his will : he surrendered his estate in fee, and took back his estate in tail ; the Barons of the Exchequer, then pretending to maintain the rights of the crown, gave to him that infamous decree without the verdict of a jury, which, he trusted, the verdict of a jury would this day overturn.

The evidence for the defendants proved, that the decree in question was so obtained, and contrary to a previous verdict of a jury. It proved, that in many very ancient documents, the Chase was uniformly described as locally situated in Dorsetshire ; that in Wiltshire it had very often been resisted with success, and had never been confirmed by a jury.

At a very late hour, Mr. Sergeant Lens replied to the defendants' case, and maintained, that to be rightly determined by the jury, it should be considered merely as a question of boundary, and that the feelings excited by Mr. Sergeant Best were only calculated to mislead the judgment.

The learned judge recapitulated all the evidence, and under his direction, at nearly two o'clock on Friday morning, a verdict was found for the defendants.

Mr. Sergeant Lens was ably assisted by Mr. Gifford (afterwards Lord Gifford, Master of the Rolls) and Mr. Baily, for the plaintiff ; and Mr. Sergeant Best, by Mr. Casberd and Mr. Gunning, for the defendants.

A new trial was moved for, on the part of Lord Rivers, in the Court of King's Bench, but that Court being perfectly satisfied with the finding of the jury, refused the application. Lord Rivers afterwards brought another action against another defendant, a Mr. Pratt, on the same question, and endeavoured to have it tried at the bar of the Court of King's Bench, but the Court would not allow it.



## FREEDOM OF SPEECH AT THE BAR.

**THIS** strange action was brought by one Peter Hodgson, an attorney, against the late eminent lawyer, James Scarlett, afterwards Lord Abinger, who died Chief Baron of the Court of Exchequer, on the 7th of April, 1844. The case was tried at the Lancaster Summer Assizes of 1817, before Sir George Wood, a Baron of the Exchequer.

Mr. Richardson stated the action to be for damages on account of words spoken by James Scarlett, Esq., at the last Spring Assizes in this court.

Mr. Raine.—May it please your lordship, gentlemen of the jury, it often happens to all of us, owing to professional accident, to be engaged in actions painful to our feelings. Painful, I can with truth assure you, the present action is to my feelings. Having travelled in our professional walk, with a gentleman of Mr. Scarlett's character, for more than twenty-six years, having known him in private life for a still longer period, I cannot be supposed capable, by any who know me, of harbouring an unkind sentiment towards him, and still less of giving utterance to such a sentiment, if I could entertain it: but what I owe to my client; what I owe to the profession to which I belong; what I owe, I may say it without arrogance, to myself, oblige me to lay before you the ground of the present action. Peter Hodgson is, and has long been, an eminent attorney in Whitehaven, in the county of Cumberland, and applies now to you in consequence of the wound given to his professional reputation by Mr. Scarlett's language at this bar. The freedom of speech at the bar is of the utmost importance. During the present assize I heard, with much pleasure, Mr. Scarlett descant upon this topic. I could not help believing that he spoke then in anticipation of this action. This freedom

of speech is of the greatest importance, not only to the dignity of the bar, but to the interests of the public, whose high and delicate interests are intrusted to the bar. Of this freedom none can be a more strenuous and tenacious friend than I. In importance and utility, I hold it to be of the same rank as freedom of discussion in the Commons' House of Parliament. I have thus made the highest admission in favour of Mr. Scarlett; but bounds must be set to this freedom of speech—otherwise, from the greatest blessing, it becomes the bitterest curse that can infest and annoy society. These bounds were overleaped in this case. Mr. Scarlett, while addressing the jury for the defendant in an action in this court, went out of his way to traduce and vilify the character of the attorney for the plaintiff, and to wound his reputation. I shall not go into the particulars of that action: they are not upon the record, and his lordship will tell you that it was not necessary they should. The words charged, and which we shall prove to have been spoken, are these:—"Some actions are founded in folly, some in knavery," (Mr. Baron Wood.—That is surely true. Mr. Raine.—Yes, my lord, these are certainly truisms, but they are thus connected), "some in both; some actions in the folly and knavery of attornies, and some in the folly and knavery of the parties." My friend is not apt to deal in metaphysical abstraction; you know very well that he does not use words without application. We shall not attempt to prove his whole speech. You know with how little credit a long story is received from witnesses; but we shall prove the words here entered upon the record: "Mr. Peter Hodgson was the attorney for the plaintiff; he drew the promissory note; he fraudulently got Beaumont to pay £150 to the plaintiff. This was the most profligate thing I ever knew done by a professional man." Then follows the particular expression which we have charged in the second count on the record: it concludes the remarks already stated to you. The sting is always in the tail. "Mr. Hodgson is a fraudulent and wicked attorney." Now, gentleman, I ask you, if you were wrong in any action brought into this court, how would you like such abuse of the freedom of speech by a gentleman holding a high reputation at the bar? A humbler individual, if he had not the spirit and the honour to vindicate his fame from such an attack, would be ruined. My client has the spirit and honour to repel it. The defendant has joined the general issue; that is, the words are denied. I have a right to presume, indeed I have more than a presumption, that his instructions did not warrant

the words, and Mr. Hodgson has taken care to ascertain the fact. In the hurry, agitation, and irritation of the bar, words may certainly be uttered that are not warranted; but a serious impression to the injury of character and professional career could never be allowed to be made with impunity. What was Mr. Hodgson to do? He called upon Mr. Scarlett to justify or to deny these words: he would do neither, Mr. Hodgson, therefore found he must appeal to a jury. The words will be indisputably proved. Mr. Hodgson was distinctly predicated to be a fraudulent and wicked attorney. The only question then was, whether he was thus to be traduced with impunity. I mentioned that the plaintiff lives in a different county. It is generally a suspicious circumstance for a plaintiff to come to a jury of a different county, as if he could not trust a jury who knew his character. But in this case the action was brought here because the words charged had been uttered here; and it is rather advantageous to my learned friend, for if there is one place on this circuit in which he is better known than in another place, it is the county palatine of Lancaster. As I believe this will be the last time I can address you on the subject, I must say a word of damages. I distinctly disclaim for my client that damages are his object. He only wants the vindication of his injured character. You will take care that he sustain no loss by this vindication. I do not ask for angry and vindictive damages. I ask no more than justice to my client. Less than justice you will not give.

Mr. Baron Wood.—Can you mention any action of the same kind, or upon what principle it can be maintained?

Mr. Raine.—I do not know that any action of the kind has ever been brought.

Mr. Baron Wood.—It appears to me that an action cannot be maintained for words spoken in judicial proceedings. If a counsel misbehaves, or goes too far, the judge who presides corrects his misconduct; but if an action is once maintained, there is no end of it. Actions of this kind would perpetually occupy the court. If a counsel were to pause in his pleading, and to say such a man is a great rogue, that would be actionable.

Mr. Raine.—That is precisely our case. We say the libellous expressions were voluntarily and gratuitously used.

Mr. Baron Wood.—No; whether a note was fraudulent or not, as I understand the record, for I know nothing of the nature of the first action.

Mr. Richardson (counsel in the case with Mr. Raine, afterwards Sir John Richardson, a Judge of the Court of Common Pleas).—The privileges of Parliament have been alluded to. I don't apprehend that the question here has any resemblance to them. (Mr. B. Wood.—Why not?) Well, be it that the utmost freedom of speech is allowed; but to go out of the way to attack character—(Mr. B. Wood.—No, it was not out of the way; the words might be too severe, but they were connected with the note. It would be a dangerous precedent to receive an action on such a ground.)—If a man's character is injured, if, for instance, a surgeon is injured and obstructed in his career, there must surely be some remedy. The presiding wisdom in our courts is no protection, when the injury is sustained, when the shaft strikes, and cannot be extracted by such protection. I, like all my brothers, am interested in the full freedom of the bar, but there must be a limit. The privilege of parliament is a peculiar species of right that cannot in its very nature be made actionable in courts of law. The plain question here is, if the counsel could with impunity go out of his way, and say, Mr. Hodgson "is a fraudulent and wicked attorney."

Mr. Topping.—Does your lordship wish us to say anything on the question?

Mr. B. Wood.—Yes.

Mr. Topping.—I did expect to hear some observations by your lordship on the novelty of this action. Its tendency and nature are important, not only to the bar, but to the client. If such an action can be maintained, very different will be the situation of every client in a court of justice, when deprived of the free and vigorous exercise of his counsel, at full liberty to apply his talents, learning, and industry to the cause in which he is engaged. The words in the record are only the opinion, the inference, the comment, which my honourable and learned friend felt at the time to be merited. The facts of the case warranted the comment. Mr. Raine very judiciously and very ably—I observe he shakes his head, but I will say—(Mr. Raine.—I read every word),—if Mr. Raine had not interrupted me, he would have heard me say, in terms no way disrespectful to him, that he showed great prudence and discretion in not communicating the facts and circumstances of the case. The words were severe, because my honourable and learned friend felt severity to be warranted. They were the comments which the learning and ability of my friend suggested on the facts proved. "Some actions are founded

in folly." That action was so, for it ended in a nonsuit. The whole passage was not respecting the character of Mr. Hodgson in general, but in this case. If the counsel are not allowed to comment on the facts proved, there is an end of the British bar's utility; its energies are paralyzed for ever: without those fair and honourable exertions which are thus attempted to be suppressed, it will be neither creditable nor useful. The expressions used by my friend were called for and merited in my opinion. But it was necessary not only to prove that they were false, but malicious. Good God! will it be said that we feel any malice against a party against whom we exert ourselves at this bar? Will your lordship be the first judge to fetter the bar; and if I may use a coarse and vulgar expression, to oblige every counsel to address a jury with a halter about his neck? The danger is palpable and plain. Your lordship will not allow in 1817 a principle to be established hitherto unknown to English law.

Sergeant Hullock (afterwards Mr. Baron Hullock).—That this action is *primæ impressionis* is proof of the unanimous opinion of the whole profession against it. The words were used in the fair and legitimate exercise of his profession; they were too strong perhaps, but they were not actionable. If he had met a man in the street and repeated them, it would be a libel. In giving a character to a servant there could be no ground of action. Sir Jervis Clifton was found liable in an action, because he had written a letter respecting a servant, after he had given the character. There was no vindication on record, because the manner and occasion was the vindication. If this action were maintained, it would be the ruin of the British public as well as of the privileges of the bar.

† Mr. Littledale (afterwards Sir Joseph Littledale, a Judge of the Court of King's Bench).—The words arise from the fair discussion of the question. If they had been used on a question of trespass, the case would be different. The action was on a note; the note was fraudulent; it was wicked and fraudulent in an attorney to act so: Mr. Hodgson was that fraudulent and wicked attorney. The words were not distinct and independent. I admit that Mr. Scarlett would be liable if he had spoken the words in the street, or caused them to be published in a newspaper. That what would otherwise be libellous might be said in giving the character of a servant was proved in the case of *Weatherstone v. Hawkins*.

Mr. Raine (in reply).—The words are false. The comment was unmerited. That they were malicious, I may say, appears on the face of the expressions. I have been twitted twice ; one sneer would be enough for not citing a case. I distinctly admitted that I knew no case. The question is, whether there are no bounds, and counsel may go any length. If there are, to call my client fraudulent and wicked was going beyond the bounds and limits which must be fixed.

Mr. Baron Wood was not for giving sanction to this action, of a first impression, brought for the first time, because it would be most mischievous, not merely to the bar, but to the public. The words might overstep the bounds of propriety, and be too severe, but they were not to be corrected by such an action. If they had been said elsewhere, if they had been published, they could be punished. In the privileges of parliament it was the same. The principle was this—whatever is said in judicial or legal proceedings is not actionable. If published, it is. Lord Abingdon was found liable in the King's Bench on this principle, and was imprisoned. He refused, on the same principle, to maintain an action at Northampton, brought by a clergyman against a parishioner, for letters written to the bishop of the diocese (Peterborough), because he would not make courts of law ancillary to ecclesiastical courts, the parishioner having a right to make such representation to the bishop. It had been said, some limits must be set. His objection to this action was the difficulty of fixing limits. During one assize, they could do nothing but try actions brought for words used by counsel at the former assize. The words might be too severe ; I cannot say anything of that. The plaintiff was nonsuited.

A motion was subsequently made, and a rule nisi obtained in the Court of King's Bench to set aside this nonsuit, and for a new trial, but the Judges Ellenborough, Bayley, Abbot, and Holroyd, after hearing the counsel on both sides, discharged the rule ; their decision being that an action for defamation will not lie against a barrister for words spoken by him, as counsel in a cause, pertinent to the matter in issue.

## THE ACTION BROUGHT BY THOMAS WAKLEY, ESQ., AGAINST THE HOPE INSURANCE COMPANY.

THIS action, in which Thomas Wakley, Esq., the well known, able, and respected M.P., late editor of the *Lancet*, and present coroner for Middlesex, was plaintiff, and the Hope Insurance Company were defendants, was tried at the sittings after term, at Guildhall, London, on the 21st June, 1821.

Mr. Adolphus opened the pleadings.

A gentleman of the special jury interrupted by stating that he was a director of the Royal Exchange Assurance Company; perhaps that circumstance might be an objection to his serving on the jury.

The Lord Chief Justice, Sir Charles Abbot (afterwards Lord Tenterden), after consulting the counsel for the plaintiff, said that there could be no objection.

Mr. Denman (afterwards Lord Denman, and Lord Tenterden's successor as Lord Chief Justice of the Court of King's Bench), stated, that in opening a case of such extraordinary interest, he would occupy very briefly the time of the court. Mr. Wakley, the plaintiff, a surgeon of great respectability, and the son of a landowner in the county of Kent, went, in December, 1819, to live at No. 5, in Argyle-street. He married in February, 1820; and on that occasion deemed it fit to increase his insurance from £600 to £1,200: the accession of property, which would naturally accompany such change in a man's situation, would sufficiently account for that proceeding. On the night of the 26th of August, or rather on the morning of the 27th (for it was between one and two o'clock), a fire was discovered in his dwelling. The flames were seen bursting from the windows; the servants rushed naked from the house; the neighbourhood was in confusion and dismay; but Mr.

Wakley himself was no where to be found. Great anxiety was, as the jury would suppose, felt on his account; search in all quarters was made for him; and, after much unsuccessful toil, he was discovered, drenched in blood, covered with dirt, with a heavy bruise upon his head, and stabs upon different parts of his body, in the house of his next door neighbour, Mr. Thompson. The friends who found the plaintiff in that situation, agitated, trembling, and almost unconscious of what he did, thought it best to put him to bed, and endeavour to restore him to his senses. In bed he remained during the remainder of the night; his house in the mean time was burned to the ground, and his property in it destroyed. Now, claiming in a court of justice to recover his loss by that fire of the 27th August, the plaintiff might fairly expect to be called upon for some account of himself—for some account of what had been his situation previous to his being found in the house of Mr. Thompson. The narrative of Mr. Wakley as to that point, it was now his (Mr. Denman's) duty to lay before the court; he confessed it was most extraordinary; but he doubted not that it was entitled to, and that it would obtain belief. On the night of the 26th of August, about eleven o'clock, Mr. Wakley, being troubled with an affection of the eyes, ordered leeches to be brought that he might apply them to his temples. At half-past eleven his servant placed the leeches before him, and went to bed. At that time Mrs. Wakley was on a visit at the house of her father, and there was no one in Argyle-street but the plaintiff and two servants. After the servants were gone to bed, Mr. Wakley applied the leeches to his face, and continued for some time to encourage the bleeding; at length he heard a knock at the street door, and, on opening it, a stranger appeared, who desired he would immediately go to Mr. Ivatt's (a patient living in the city), who was extremely ill. Mr. Wakley said that he could not then leave the house, but that he would see Mr. Ivatt early in the morning; the stranger said, that he had walked fast, that it was hot weather, and that he wished Mr. Wakley would give him some beer. The plaintiff then admitted the man into his hall, and went down into the cellar in order to draw him some cider; as he returned up the kitchen stairs he received a violent blow, from what hand he knew not; but it stunned him, and he fell senseless to the ground. Awaking from his stupor (how long after he could not tell), Mr. Wakley saw flame and smoke surrounding him. He found that the house was on fire; and going into the back kitchen, he contrived, by standing upon a meat



screen, to force his way through a sky-light to some leads ; thence he climbed over a wall, and eventually made his way into the yard of his neighbour, Mr. Thompson. This was Mr. Wakley's statement.

From twelve o'clock, which was the time as near as he could guess, when the stranger came, until two o'clock, when he was found in the house of Mr. Thompson, he could give no account of himself ; he supposed he must have lain, during that time, in a state of insensibility. If he was asked, however, the cause to which he could ascribe the mysterious visit of his secret enemy, he could, upon that point, perhaps, furnish some clue to explanation. The jury would remember the execution of Thistlewood and his companions for treason. Owing to some infatuation, which it was impossible to account for, a report had been spread and generally credited, that Mr Wakley was the individual who, under a mask, had beheaded those persons ; and some of the crowd, while witnessing the conflagration, had been heard to rejoice, that punishment had overtaken the masked executioner. At all events, if the plaintiff was unable to give a full account of all that had befallen him on the night of the fire, the jury would see the improbability, nay the impossibility, of his having raised that fire himself. Mr. Wakley was standing in a situation of comfort, nay, of comparative opulence ; he was rising fast into practice and reputation—the respected member of an honourable profession ; and so far from having anything to gain by the destruction of his property, he would, after receiving £1,200 from the defendants, stand in the situation of a very considerable loser.

The formal proof in the case being admitted on the part of the Hope Company, Mr. Wakley's policy, the due notice, and other documents, were put in and read.

Mr. George Thompson was then called, and examined by Mr. Curwood. The witness said—I live in Argyle-street, next door to the plaintiff ; his house (No. 5) is my freehold. On the morning of the 27th of August, just before one o'clock, we were alarmed by a knocking at all the doors in the street ; I jumped up, looked out of a back window, and found the house next door on fire. The flames rushed out of the back parlour window, and lighted up the yard ; I ran down into Argyle-street, and found the street door of No. 5 open, and the house passage in a blaze. About three quarters of an hour after it was that I first saw Mr. Wakley. He was then in the passage of my house ; I do not know how he came there ; I had been in and out removing my plate, and other property.

Mr. Wakley, when I saw him, was covered with dirt and blood; his clothes were wet, and he had the appearance of a man either deranged or intoxicated. I never saw a man in such a state before. After giving him a little wine, I requested Mr. Parker, our opposite neighbour, to take him over to his house; Mr. Parker did so. After the roof of No. 5 had fallen in, about four in the morning, I saw Mr. Wakley again: he was in bed at Mr. Parker's, extremely languid and ill; and he showed me some cuts on his breast. I think there were three cuts; I saw no bruises. I have been in Mr. Wakley's house, in the dining-room, but not in the drawing-room: the furniture seemed to me to be the same that Mr. Archdeacon Wollaston, the former occupier of the house, had sold to Mr. Wakley.

Cross-examined by Mr. Gurney (afterwards Mr. Baron Gurney).—The first alarm was at twenty minutes before two on Sunday morning; not before one.

[A model of Mr. Wakley's house, in Argyle-street, was then placed upon the table.]

Mr. S. Parker.—I live at 34, Argyle-street, nearly opposite the plaintiff's house. The first I saw of the fire was, that the flames were rushing from the front parlour windows. I went to the assistance of Mr. Thomson, the last witness. I did not see Mr. Wakley until Mr. Thomson gave him to my care. He then seemed almost deranged: his face was bloody, his hands covered with dirt, he was much agitated, and his whole body was in profuse perspiration; blood from his ear had trickled down his face. I put him to bed at my house; he vomited extremely in going up stairs. As we crossed the street, a thief seized Mr. Wakley's watch; Mr. Wakley seized him, and gave him into the charge of an officer; he then sunk down exhausted. I looked at his body; it was much bruised, and he had been stabbed in three places. He repeated constantly—"Am I safe?" He drank water greedily in my house. I never saw Mr. Wakley before the night of the fire.

Cross-examined by Mr. Gurney.—Dr. Luke attended him at my house: his clothes remained some time at my house: Mr. Thomson, jun., at last took them away.

Mr. J. Thomson, jun.—I am the son of Mr. George Thomson, and live with him. On being alarmed I ran down into the street. Mr. Wakley's door was open, and the lamplighter had a ladder up to the first floor window. I searched for Mr. Wakley, and asked if he was

safe : the neighbours said Mrs. Wakley was safe, but they thought Mr. Wakley was burned. I went to the windows at the top of my own house, and called him loudly ; but there was no answer. Between three and four o'clock I first saw Mr. Wakley, at Mr. Parker's house. He was languid and spoke little.

Cross-examined by Mr. Pollock.—I was before the magistrate, Mr. Farren. The dressing coat and waistcoat worn by Mr. Wakley were produced at that time : the examination was at Mr. Parker's house. My father sleeps on the first floor of our house ; a female servant sleeps in a back room on the ground floor ; my father's window looks into Mr. Wakley's yard.

Mr. William Gardner said—I was at Mr. Wakley's house about ten o'clock on the night of the fire. His eyes seemed much affected, and he said he was going to put leeches to them. I wished him to come to see my daughter, who was ill ; he said he was himself ill, and that he would come in the morning ; he asked me to sup ; I declined. I reached my house, 294, Oxford-street, a few minutes before eleven o'clock.

Daniel Wicher.—I was servant to Mr. Wakley. On the night of the fire I went to bed about half-past eleven : my wife, myself, and Mr. Wakley were in the house. My wife and I went to bed, leaving my master in the back parlour, going to put leeches to his face. I was first alarmed by a knocking at the door and a springing of rattles. I think it must have been about one o'clock. When I came down stairs, I saw the flame bursting from a partition between the two parlour doors into the passage. My wife came down before me. I looked for my master : I made an attempt at both parlours, but could not get near them for the fire. The first I saw of my master was at Mr. Parker's, about six in the morning. I went to live with Mr. Wakley on the 5th December, 1819, just before his marriage. A little new furniture came home at the time of his marriage. The house was pretty well furnished, but not handsomely. My master paid regularly every man his own.

Cross-examined by Mr. Marryat.—My master had bought the most of his furniture from Archdeacon Wollaston. The new furniture, which came at his marriage, was a sofa table and two card tables, and some other things that came from a Mr. Ashelford. I slept in the front garret of my master's house. I asked my master, before I went to bed, if I should sit up with him ; he said not. On the alarm being given, I went to my

master's bed-room, which was the back garret: he was not there. I had been asleep when the alarm was given.

Sarah Wicher.—I am wife to the last witness, and lived with Mr. Wakley. The house was extremely well furnished. A great deal of new goods came in at Mr. Wakley's marriage. There was a great quantity of linen of every kind, and very good. Mrs. Wakley's apparel was handsome and abundant. All bills were paid weekly or monthly. As soon as I was alarmed, I ran down stairs, and cried "Fire!" The street door was not locked; when I took hold of the lock it opened at once; it was a catch lock, and the door might be shut from the outside.

Joseph Ashelford.—I am an upholsterer. I have known Mr. Wakley since 1816. I knew his house in Argyle-street; it was well furnished, but not in the modern style. I believe that the house contained the furniture mentioned in the inventory delivered to the Hope office. I furnished goods to the amount of £80 or £90 over and above the furniture taken from Archdeacon Wollaston. In December, 1819, I saw the Archdeacon's furniture, and valued it: my estimate did not include fixtures.

Cross-examined by Mr. Gurney.—I gave my opinion as to the value of the things taken from Archdeacon Wollaston: I took them to be worth from £500 to £600. Mr. Wakley bought them for £300; he afterwards brought some furniture of his own into the house. I furnished goods to the amount of £80; they were not paid for at the time of the fire: they are paid for now. I valued the things in the inventory presented to the office. I valued three rosewood tables in that inventory at £27.

Mr. Gurney.—They are charged, my lord, in the maker's bill at £16.

Cross-examination resumed.—My inventory for the office was made after the fire; and of course from memory.

Samuel Malison.—I was formerly a surgeon and apothecary, in Mill-street, Hanover-square. At the latter end of the year 1818, I sold my business and stock to the plaintiff. My household goods were charged at £40; £400 was given for drugs and goodwill. The gross returns of my business were £600 a-year. Mr. Wakley re-sold the business which he bought of me to a gentleman named Comely.

Mr. Archdeacon Wollaston.—I lived at 5, Argyle-street, and let that house to Mr. Wakley. I sold my furniture for £300 to Mr. Wakley, and gave him the fixtures into the bargain. I dined with the plaintiff

after his marriage, and saw that he had plate ; additions had been made to the furniture.

Cross-examined by Mr. Marryat.—The price of the furniture between Mr. Wakley and myself was fixed by an upholsterer named Finar. Mr. Wakley did not care to purchase the lease from me ; and he paid me an advanced rent of £40 per annum for the house on that account.

Mr. Wm. Green.—I am an apothecary at Whitechapel, and have known Mr. Wakley three or four years. He first was in business in the city, and seemed to do well for a young man.

Mr. Malison called back.—Over and above the £40 I mentioned, I received £30 more from the plaintiff for some articles of furniture.

Mr. W. Goodchild.—I am father-in-law to the plaintiff. My daughter was handsomely fitted out upon her marriage. I gave her £300 for clothes alone ; and afterwards gave her £30 worth of plate. Presents were also made by different branches of her family. I gave my daughter the money, and desired her to buy what she pleased : she afterwards offered me the tradesmen's receipts ; but I did not accept them. Mrs. Wakley was at my house at the time of the fire : she was unwell, and on a visit to me at Hammersmith.

Miss Mary Goodchild.—Mrs. Wakley is my sister. I am sure that she laid out the money given to her by my father on her marriage.

Mr. Thomas Faithorn.—I have been some time the plaintiff's solicitor. Upon a statement which he made to me after his marriage, I advised him to increase his insurance. It was then £600. I have dined often with Mr. Wakley. I dined with him three days before the fire ; things looked as usual. There was always an abundance of plate and glass in his house.

Mr. Denman.—That is my case, my lord.

Mr. Marryat felt no doubt of convincing the jury, that the Hope Company were bound, both in justice to themselves, and in duty to the public, to resist, even to the utmost, the claim of the plaintiff. The jury had heard Mr. Wakley's story : upon his own admission it was extraordinary ; upon the evidence which he (Mr. Marryat) should adduce, it would appear incredible. The worth of Mr. Ashelford's evidence would be easily appreciated, when it was seen that he had valued at £27 tables which, new, had cost only £16. Now there was a clause in the policy held by the plaintiff, that if, upon the making out a claim of loss, any false swearing or attempt at imposition was set up, then the claimant

should forfeit all benefit of his insurance. Upon that ground, in the first instance, he should contend, and he trusted successfully, that a verdict must pass for the defendants. That fraud and gross fraud, had been committed by Mr. Wakley in his claim, the jury could scarcely doubt, when they looked at the inventory furnished to the Hope Company. For furniture, which had cost at most £450, £735 was charged; for plate £168 was claimed, though all the melted metal found in the ruins had weighed only seventy-three ounces; and articles had been put into the inventory as silver, remnants of which had been found, and which turned out to be merely plated. But the most audacious part of the business was the immense difference between the sums claimed for various descriptions of property and the bills of purchase, and other vouchers, put in to prove the existence of such property:—Furniture, £730; vouchers under £500: books, £104; vouchers, £5 10s.: linen, £101; vouchers for £18: Mr. Wakley's apparel, £144; vouchers, £67: Mrs. Wakley's apparel, £300; vouchers under £100: china, £163; vouchers, £14. And Mr. Wakley was a young man, only a few months a house-keeper; and therefore with every means of proving purchases, which, if made at all, must have been made less than eight months before the accident. There were some points, too, as to which Mr. Wakley's situation had been a little misrepresented to the court. His extensive practice had been spoken of; but no proof had been given; no supply of drugs, nor even of phials, shown. As there had been no proof in support of this great practice, however, there should be some against it; for a gentleman would be called who had attended to Mr. Wakley's business for him during an absence of ten days from London; and that gentleman would tell the jury, that, in the course of the whole ten days, he had attended but upon one patient, and that patient a woman in a menial station of life. But now Mr. Marryat came to the extraordinary part of the case—to the attack upon Mr. Wakley—to the visit of the midnight assassin. That assassin must have been a man of no ordinary penetration: he must have discovered that Mr. Wakley had a patient named Ivatt; and he must have foreseen, that, at the particular hour of his visit, and on the particular night, Mr. Wakley would, in person, open the street door to him (having previously sent all the servants to bed); refuse to attend a patient, and go down stairs to draw beer. He (Mr. Marryat) put it to the jury, whether a gentleman knocked up at twelve at night, and asked for liquor, was not more likely to give the petitioner sixpence,

and send him to the next public house, than himself to go down into the cellar to draw cider for him. The assassin, however, it was said, knocked Mr. Wakley down, and stabbed him, taking care, however, not to hurt him very seriously, it should seem, because he went to Hammersmith to his family next day; and even the doctor who attended him had not been called upon the present occasion to speak to the nature of his wounds. Well, being assassinated, Mr. Wakley was found, half an hour after the alarm of fire was given, in Mr. Thomson's house. Where had he been from the breaking out of the fire? Oh, when he found the house in flames, he got into the back kitchen, forced his way through a skylight, on to some leads, and thence got over a wall. But why go through the kitchen, and through the skylight, and over the wall, when he might have walked out at the street door?—for the servants, who came down stairs when the alarm was given from without, found no difficulty in going out by the street door. And again, why break the skylight to get upon the leads, when there was a back door, out of which he might have walked on to the leads without any breaking at all? Mr. Wakley's face was bloody when he was found. No doubt; he had been applying leeches to it. But his clothes were bloody. Yes, and those clothes had been preserved: they would be produced in court, and would form, perhaps, the most conclusive evidence that could be adduced against the plaintiff. There was another circumstance worthy the attention of the jury, because it arose out of a gratuitous assertion of the plaintiff himself. It had been suggested by the plaintiff, that, among a variety of valuable properties not insured, he had lost a quantity of bank notes, and a great number of guineas, contained in a certain writing desk. Now the writing desk had been burned; and certainly the bank notes, if there were any, would burn to; but the guineas would not burn, they would not even melt; and yet no guinea, nor vestige of a guinea, could ever be found among the ruins, although the rubbish had been sifted for the purpose. Still the unknown stranger might have stolen the guineas. There were two circumstances against that: first, he had left untouched a pair of silver candlesticks standing close to the desk; and next, although the desk had been burned, the lock had been found—the key had been found near it; and the lock had been found in a locked state: a thief, after stealing the guineas, would scarcely have taken the trouble to lock the desk after him. In fact, as the jury would see, Mr. Wakley had been mercifully dealt by: for the murderer had made wounds only skin



deep, and the thief had carried away nothing. Mr. Marryat concluded a long detail of circumstances by expressing his conviction that the story of the plaintiff would, of itself, afford sufficient ground for giving a verdict to the defendants.

G. Beforth called and examined by Mr. Gurney.—I was a watchman in Argyle-street on the night of the fire. I was crying half-past one o'clock, when a hackney coachman passing gave me the alarm. Smoke was coming from the area, the door, and windows of the house No. 5. I saw no fire then. I knocked and sprang my rattle, and alarmed the neighbours. Bliss, the watchman of the Argyle-rooms, joined me. I remained at Mr. Wakley's door until the servants, a man and a woman, came out. I heard a bolt go before the door opened. The man as he came out said "Break open that back door, and save my master." I then went to the back door, leading to the yard, and finding it fast I forced it open. There was so much smoke in the yard that I could see nothing. Sparks of fire seemed to come from the space between the front and back parlours. The kitchen staircase was full of smoke; I think that no person could remain upon those stairs any time without being suffocated. Before the servants came out of the house, I distinctly heard a bolt undrawn: I then heard the handle of the lock go, and the door was opened.

Cross-examined by Mr. Denman.—I did not see the woman come out of the house, I only saw the man servant.

Daniel Bliss.—I joined the last witness when the alarm of fire was given at Mr. Wakley's house. I joined him at the door of Mr. Wakley, where he was knocking and springing his rattle. I knocked and rang also; and in a few minutes I heard a fumbling within. Almost directly a man came out in his shirt; a woman came out in a minute after; she said, "Save my master;" I asked where he slept; she answered, "In the back parlour." I then went to the back parlour door, and tried to open it with my hand but could not. I then forced it open, and saw the flames coming through the floor at the left hand corner of the room. The smoke overpowered me, and I retreated.

Stephen Lavender said—I am a Bow-street officer. I saw Mr. Wakley about a week after the fire, and requested he would state to me, in some measure, the occurrences of that night. Mr. Wakley said:—"After my servants were in bed I was bleeding myself with leeches. While I was doing so, some one knocked at the street door. I went to the door and



asked what the party wanted ; a man said he had come from Mr. Ivatt's, who wished to see me immediately. I told the man I could not visit Mr. Ivatt before the morning : he then said that he had come in great haste, and begged for some small beer. I admitted him into the house, and asked if he chose beer or cider ; he said he chose cider. I then wrapped my head in a towel, and, leaving the man in the passage, went down to the cellar to draw some. When I was returning up the stairs, I received a blow on the head that laid me senseless. I lay in that state, as I apprehend, for a considerable time. When I came to myself I found that the house was on fire. I tried to go up stairs, but finding smoke and flames in the passage, I crawled into the back kitchen. Being alarmed for my safety, I contrived to escape through the skylight of the kitchen, by the aid of a meat-screen and a trestle : and after getting through the skylight on to the leads, I got over the wall into Mr. Thomson's yard." This was the substance of what Mr. Wakley told me. He also mentioned that he had received some anonymous letters previous to the occurrence. I went afterwards into the back kitchen of Mr. Wakley's house, no part of which was burned, and found a meat screen and trestle placed as Mr. Wakley had described. The glass of the skylight was broken and the frame also ; the frame was of wood work. Mr. Wakley is a trifle taller than I am. If a man was upon the meat screen, there is a beam above which he could reach with his hands, and upon which he might, with some difficulty, get ; it would require some exertion of strength to do it. Between the beam and the skylight there is room for a man to sit (sitting upon the beam). The chance is, that any person forcing himself through the skylight would be considerably injured. His hands would be cut.

Mr. Gurney then proposed to produce the clothes which Mr. Wakley had worn on the night of the fire.

Mr. Denman objected that their identity was not made out.

A witness was called to that point ; and the clothes were received.

A figure in bulk and stature resembling the plaintiff, and dressed in the bloody garments which that gentleman had worn on the night of the accident, was then wheeled forward into the witness-box. Mr. Lavender stood beside it.

Mr. George Thomson being called again, said—Mr. Wakley's hands were dirty, when I found him in my passage, but not cut, so far as I saw.

Stephen Lavender continued.—There are cuts upon the clothes of this figure. There is one cut in the cape of the coat. There is a cut in the waistcoat, about the middle of the left side, about half an inch in width, done, apparently, with a very sharp instrument. There are two cuts in the shirt, where only one appears in the waistcoat. The cut in the waistcoat is horizontal: those in the shirt are perpendicular.

Mr. Denman.—That might arise from a fold in the shirt at the time when the blow was given.

Mr. Gurney.—In that case the shirt would have been treble, not double; and there would have been three cuts.

Stephen Lavender continued.—There is a considerable stain on the cut part of the shirt; but there is no corresponding stain on the inside of the waistcoat; there is no stain whatever near the cut part of the waistcoat. I have been frequently in the habit of seeing stains made by blood. The stain here upon the shirt is certainly made by a mixture of blood and water. I did not see the shirt until five or six days after the transaction; my judgment then was as it is now. If the stain had been made by blood flowing from a wound, it would, no doubt, have been of a much deeper colour than it is. There is a cut about the middle of the waistcoat on the right side. About the same point there are in the shirt several very small perforations, not so large as the cut in the waistcoat, but done, apparently, by some fine pointed instrument: there is no stain of blood upon those small perforations.

Cross-examined by Mr. Denman.—Mr. Wakley told me, that he had received two threatening letters before the fire; but he did not say that they spoke of his having cut off the heads of Thistlewood and his companions. He said he believed them to have arisen out of some jealousy at his late marriage.

Thomas Harvey.—I am a surgeon, residing at Walworth. I have frequently occasion to see the stains of blood, and of blood and water, upon linen. The spots upon the neckcloth of this figure seem to me to be blood. The stains upon the shirt seem to me to have been made by some material of a lighter colour.

Dr. Stephen Luke.—I reside in Argyle-street, and was called to Mr. Wakley two hours after the fire. I found him with two very slight wounds upon his body, one on the breast, and the other on the lower ribs. One of the wounds had bled a little, the other had scarcely bled at all. Both punctures were upon the bone, where there was little but

skin to cut. A surgeon (Mr. Keate) had been there before me. I ought to say, that it is possible, a wound made upon a bone might exude a light-coloured fluid, similar in appearance to that upon the shirt of this figure; but I do not think, that the wounds which I saw upon Mr. Wakley, could produce so much stain as that which appears upon the shirt.

William Mead.—I am foreman to the Hope Company. I took charge of the ruins of Mr. Wakley's house on the morning of the fire. I was in possession, and a guard fixed, before the fire was out. Watch was kept day and night. We found some plate, but no guineas. We found some plated articles, a liquor-stand, and part of a soup ladle.

Mr. Gurney.—The soup-ladle is charged as silver in the inventory, at the price of £4 4s., and the liquor-stand as silver, at the price of £5.

Mr. Adolphus.—You are not to assume, that these plated articles are the articles which were charged to you as silver.

Paul Galland.—I am a fireman of the Hope Company. In the ruins of Mr. Wakley's house I found some silver forks and spoons half melted. I searched for money, but found none. I found that lock (the lock of the desk): the bolt was shot; it was locked.

Edward Leet proved that the silver found in the ruins weighed seventy-three ounces.

Mr. William King.—I am a surgeon and apothecary. In the autumn of 1819, Mr. Wakley applied to me to attend to his business during a journey he was taking to Devonshire. I undertook to attend all cases except midwifery. Mr. Wakley was absent, I think, about ten days; and I attended one patient, a decent woman, lodging in Avery-row.

Mrs. Field proved that she was the landlady of the house in Mill-street, at which the plaintiff lived before he went to Argyle-street. Mr. Wakley did not take all the furniture away with him; part he left to Mr. Comley. That part was afterwards distrained for the sum of £17; after the distress was paid, some property still remained.

Cross-examined by Mr. Denman.—All the furniture that Mr. Comley had, was that which had belonged to Mr. Malison and Mr. Wakley. No goods came with Mr. Comley, or went away with Mr. Wakley.

The broker who made the distress upon Comley, proved, that he valued the goods in Comley's possession, at £19.

Margaret Grierson said, that she lived with plaintiff in Mill-street. Mr. Wakley took nothing from Mill-street but books and house linen,

and some plate. Witness lived with Mr. Wakley about a fortnight in Argyle-street: whether anything came after that time from Mill-street she could not say.

Mrs. Field called back, said that Comley did not take possession in Mill-street until April. Mr. Wakley left about Christmas.

James Lahee was appraiser at the transfer in Mill-street from Mr. Malison to Mr. Wakley. The whole of the furniture was valued at £46 12s., including some articles of plate. Witness knew of the distress afterwards upon Mr. Comley; very few of the articles which witness had valued between Mr. Wakley and Mr. Malison were then remaining: the greater part of them had been removed.

Mr. Denman then called rebutting evidence.

Mr. Parker saw the hands of Mr. Wakley after the fire: they were cut, as if by glass. The engines had begun to play before witness first saw plaintiff in the house of Mr. Thompson. Witness could account for the small punctures in the shirt: a lancet lay upon the bed with the shirt; the shirt was in folds, and the lancet lay upon it. Witness sat upon the shirt and the lancet several times, and he thought that the pressure had occasioned the cuts.

Cross-examined by Mr. Marryat.—The surgeon, Mr. Keate, who attended Mr. Wakley at the house of witness, was now in court.

Mr. Marryat spoke to evidence.—No one had seen the cut hands but the witness, Mr. Parker; and the surgeon who first attended the plaintiff, and who, of course, must be within his knowledge, was now in court; but the plaintiff's counsel did not think fit to call him.

Mr. Denman commenced his reply by observing, that he, on his part, had proved all that he had opened; but the case opened for the defendants had not been made out in evidence. The plated articles, inserted in the inventory under the head of silver, had been so inserted by mistake; and the error would be found corrected in the bills of parcels, by which that inventory had been accompanied. The vouchers sent in had been as full as under the circumstances could reasonably be expected; and property beyond the amount (£1,200) claimed, was shewn by the evidence to have been in the possession of Mr. Wakley. The charge of fraudulent claim, then, being fully got rid of, he would come to the heavier part of the accusation against his client—to that part which affected not only his character, but his life. To suppose that Mr. Wakley had set his own house on fire, was to suppose him contemplating, without any possible

motive, the double crime of arson and murder : of murder certainly ; because, independent of injury to accrue to his neighbours, he must coolly have resolved to burn his own servants to death. The learned counsel then proceeded at great length to comment upon the defendant's evidence ; and, alluding to the testimony of Beforth, as to the drawing of the bolt before the street door was open, he said that the jury must suppose Mr. Wakley a fool as well as a knave, if they credited the statement of the watchmen. If the plaintiff was making up a story, he would, of course, take care to unbolt the street-door ; because the probability was, that the door would be broken open by persons from without ; and the fact of its being found bolted, would, of itself, amount to a refutation of the tale upon which he was proposing to rely. Mr. Denman concluded by observing, that it was competent to Mr. Marryat himself to call Mr. Keate, if he wished to examine him.

The Lord Chief Justice told the jury, that the plaintiff's claim was resisted upon two grounds :—first, that by making a fraudulent claim, in point of amount, he had forfeited all benefit from his policy ; and, second, that the fire at his house had not been accidental, but contrived and raised by his own wilful misconduct. If it could be made out that the property in the plaintiff's house fell very short, not of the sum alleged in this case to have been lost, but of the sum insured, then there would seem to be some motive which might induce a dishonest man to set his house on fire ; but, supposing that fact to be negatived, there did not appear to have been any motive which could lead Mr. Wakley to commit the crime imputed to him. The absence of all evidence as to motive, however, although a circumstance important for the consideration of a jury, was not to be deemed conclusive of a cause ; for it did sometimes happen that men committed the blackest crimes from motives known only to themselves, and which could never be fathomed by those whose duty it was to consider of their conduct. The plaintiff in the present case, in furnishing his particular to the insurance office, had estimated his loss at £1,600, although he could only recover £1,200 from the company. The jury had heard the evidence as to the property in Mr. Wakley's possession, and they would consider how far, upon that evidence, his statement of his claim was likely to be a just one ; and estimating the value of the furniture claimed for, they would remember that the greater part of it had been purchased from an outgoing tenant, and had therefore been obtained probably at a reasonable rate. His lordship then detailed the

whole of the evidence to the jury, and commented upon those parts of it which appeared to him most important. The evidence of Beforth, as to the withdrawing of the street-door bolt was most material ; and that of Bliss, as to his having found the door of the back parlour fast, was still more so, because the fastening of the back parlour door was incompatible with the tale, already extraordinary, told by Mr. Wakley. It was possible, however, that Bliss might have mismanaged the lock of the back parlour door in his hurry, and it was to be remembered that both the witnesses spoke to facts taking place at a moment of great trouble and confusion. Upon the non-appearance of Mr. Keate, his lordship would make but one remark :—it was certain that the plaintiff could have called him ; it was probable that the defendant could have done so. He (the Lord Chief Justice) wished that Mr. Keate had been called ; because the plaintiff, by his own account, must have received a very violent blow upon the head. Now, no witness had spoken to any hurt, having been apparent upon the head of the plaintiff. The case, however, was altogether a case for the consideration of the jury ; and to their decision his lordship, in conclusion, with perfect confidence, committed it.

The jury, after retiring for about a quarter of an hour, found for the plaintiff—Damages, £1,200.

## THE FORGERIES OF FAUNTLEROY.

THE vast extent and daring nature of the forgeries committed by this unfortunate man, his own respectable position in society, and the death which awaited his conviction, but which, to the honour of humanity, was soon to make way in similar cases for a milder punishment, gave to Fauntleroy's trial an intensity of interest which probably never will occur again on a prosecution for forgery.

In the course of the following report of the trial, full particulars will be found relative to the station, business, and career of Fauntleroy. It may however, be observed that, despite of what he said in his defence, there is but too much reason to believe that the reports of his private dissipation and extravagance went very little beyond the truth.

The trial of Henry Fauntleroy took place at the Old Bailey on the 30th October, 1824. At ten o'clock on the morning of that day, the judges, Sir James Allan Park, a Justice of the Court of Common Pleas, and Sir William Garrow, a Baron of the Exchequer, took their seats on the bench, accompanied by the Lord Mayor. The Attorney-General Sir John Singleton Copley (afterwards Baron Lyndhurst and Lord Chancellor), entered the court at the same time, and took his seat at the table, next Mr. Freshfield, the Bank solicitor.

At five minutes past ten o'clock Mr. Henry Fauntleroy was conducted to the bar, between the two city marshals, the head turnkey of Newgate, and accompanied by Mr. Harmer his solicitor. He was dressed in a full suit of black, and the firmness which he displayed in the morning seemed for a moment to have deserted him, when he was exposed at the bar to the gaze of the court. His step was tremulous ; his face pale, and much

thinner than when he was first examined at Marlborough Street ; his grey hair had rather a lighter hue as if from the mixture of a little powder ; he never for a moment raised his head ; but, placing his hands upon the front of the dock, stood with dejected mien while the preliminary forms of the trial were arranging.

The deputy clerk of the arraigns opened the business by addressing the prisoner at the bar in the usual form, and arraigning him upon seven different indictments for different forgeries to a great amount.

To each of these seven indictments the prisoner, in a subdued tone of voice, and without raising his eyes from the bar, pleaded Not Guilty.

The reading of the indictments occupied the court, twenty-five minutes. Towards the close of the reading,

Mr. Gurney (afterwards Sir John Gurney, a Baron of the Exchequer) rose and applied to the court for permission to have the prisoner accommodated with a chair at the bar.

Mr. Justice Park.—The application is of course made on the ground of the prisoner's indisposition.

Mr. Gurney.—Certainly, my lord.

Mr. Justice Park.—O, then, let him have a chair.

A chair was immediately handed to the prisoner, who sat upon it at the right hand corner of the dock, leaning his head upon his hand, and covering the greater part of his face with a white handkerchief, his whole demeanour being at this time that of a person labouring under deep despondency.

The trial on the first indictment then commenced.

The Attorney-General rose and stated the case for the prosecution as follows :—May it please you, my lords and gentlemen of the jury, you have heard during the reading of this indictment, that the prisoner at the bar stands charged with fraudulently forging and uttering a certain power of attorney for the transfer of certain stock, entered in the bank of England in the name of Miss Frances Young. It is my duty on the part of the prosecution, to state to you the circumstances out of which, according to my instructions, the present prosecution has sprung ; and afterwards to lay before you the evidence which I have to offer in support of this indictment.

The prisoner at the bar, gentlemen, was well known as a partner in the banking-house of Marsh, Sibbald, and Co., of Berners-street, which was established about thirty years ago. His father was a partner in the



original firm—he had previously been an active clerk in a banking-house in the city, and the partners who established the firm, not being equally men of business themselves, gave him a share to avail themselves of his practical information in the management of their affairs. The elder Mr. Fauntleroy died in the year 1807, and his situation was immediately occupied by his son, the prisoner at the bar, upon whom, also, for his practical knowledge of business, and the comparative superiority which he had in this respect over his co-partners, nearly the whole of the actual business devolved. In the year 1815, Miss Frances Young became a customer to the firm, and had then entered in her name at the bank a sum of £5,450 in what were called the three per cent. consols. She gave the firm of Marsh and Co. a power of attorney to receive the dividends in her name, but gave them no power whatever to sell or otherwise dispose of the principal. In May, 1815, however, an application was made at the bank, and represented as having been so made in behalf of this lady, to sell, by her power of attorney, £5000 of this stock.

You are probably aware of the forms prescribed by the Bank of England in transacting the business of these transfers. The applicant goes to the Bank, and obtains a slip of paper, which he fills up with the name of the party in whose behalf he applies, he describes the stock in the Bank, the amount and particulars required to be transferred, and the name and address of the person to whom the transfer is to be made. Upon receiving these instructions in the form inserted upon the slip of paper, the bank clerk, to whom it is delivered, hands over a power of attorney, which is to be transmitted to the person who is to make the transfer, for the purpose of receiving the requisite signature. It is customary at the Bank to preserve these slips of paper, but in this instance the particular slip has been lost, and it cannot therefore be said to whom it was delivered, it being usual to endorse the name of the party on the slip. But the power of attorney, which was prepared according to the slip so made, is preserved, with the necessary attestations of the witnesses. There must be to these powers of attorney two attesting witnesses, with the description of their respective names and addresses. This power of attorney purported to be signed by Frances Young, and that signature would be proved to be a forgery. The attesting witnesses were John Watson and James Tyson, clerks in the bank of Marsh and Co., and their signatures were also forgeries—for they never transacted any business with Miss Frances Young, and never executed any transfer of stock for

her. In all these documents, which are in printed forms, it is required by the Bank that they should be filled up with the date and with other words written at length. This is so done in this forged transfer, and it will be proved to be in the hand-writing of the prisoner at the bar, in all its parts.

It must be quite clear, therefore, that the forgery has been committed by the prisoner, or with his knowledge. The attesting witnesses are his clerks, men whose hand-writing must have been known to him, and a forgery of which he must at once have detected, if brought to him by a third party. The practice at the Bank of England was, that when these powers of attorney, after being duly filled, were executed, they must be deposited for twenty-four hours with the clerk, for the purpose of being compared with the books, and for such other inspection and precaution as were deemed necessary on these occasions for the security of property, so far as time and circumstances allowed.

After all these preliminary steps the applicant was further called upon, to write on the back of the instrument these words:—"I demand to act on this letter of attorney." He must then date it and sign his name to it, and that too in the presence of one of the clerks of the Bank of England, who attests the signature. Now this power was lodged at the Bank on the 31st May. On the 1st of June, the prisoner at the bar attended in person at the Bank, and demanded in due form to act in the execution of the power of attorney. He signed his name to it in the presence of one of the Bank clerks, a Mr. Bowring. So that here you will have before you a power of attorney filled up in the prisoner's hand-writing, purporting to be executed by Frances Young, purporting to be attested by two of his clerks, with whose hand-writing, I repeat, he must have been necessarily acquainted, produced by him in person at the Bank, and to which he finally sets his name in the presence of one of the clerks of that establishment. But sufficient as this would be to prove the case, it is not all, for I am about to state to you that we have besides a document of a character so extraordinary, so singularly complete in all its parts, as to leave no possible doubt that the prisoner at the bar was the party who had committed the offence. When the prisoner was taken into custody in his own counting house, he, in the presence of the officer, locked his private desk, with a key which was then attached to his watch: that key was afterwards taken from him by the officer; and when the respectable solicitor for the Bank, who conducts

this prosecution, went to search the house in Berners-street for the prisoner's papers, to ascertain whatever particulars he could therein find respecting these transactions, he found in one of the rooms of Messrs. Marsh and Co.'s Bank, in which tin cases, containing title deeds of their customers, were deposited, with the names of the owners inscribed upon them, one tin box without a name. This led him to examine it. The key was found in the prisoner's private desk, which he had himself locked in the presence of the officer, and on opening this box were found a quantity of private papers belonging to the prisoner, and among them the extraordinary document of which I have apprised you, and which ran thus, all in the hand-writing of the prisoner:—

“ Delaplace, £11,140 6s. 4d. consols; E. W. Young, £5,000 do.; General Young, £6,000 do.; Frances Young, £5,000 do.; Jedediah Kelly, £6,000; Lady Nelson, £11,595 do.; Mrs. Pelham, £20,000 four per cents.; Earl of Ossory, £7,000 do.; J. Bower, £9,500, do.; M. C. Parkins, £4000 consols; Lord Aboyne, £61,000 four per cents; Elizabeth Fauntleroy, £3,550 five per cents.; W. Reader and H. Fauntleroy, £7,000 do.; Peter Moore and John Marsh, £21,000 three per cents.”

This paper contained a total of sums considerably exceeding £170,000, was all written in the prisoner's hand-writing, and these words in the same hand, followed, and concluded the facts of the prisoner's guilt:—

“ In order to keep up the credit of our house, I have forged powers of attorney, and have thereupon sold out all these sums, without the knowledge of any of my partners. I have respectively placed the dividends as they became due to account, but I never posted them.”

“ May 7, 1816. (Signed) “ HENRY FAUNTLEROY.”

These words followed:—

“ The Bank began first to refuse our acceptances, and thereby to destroy the credit of our house, they shall therefore smart for it.”

(Signed) “ HENRY FAUNTLEROY.”

This is the extraordinary document to which I allude; and was there

ever a record of a fraud more intelligible, and yet more negligently kept? There is no doubt, I think, that when the prisoner at the bar drew up this singular and conclusive document, that he contemplated some intention for which it was applicable, perhaps to abscond, and protect his partners from any suspicion of participation in his acts. Be the intention, however, what it may, if to abscond, it was clear the prisoner had subsequently altered his intention, and at all events, nothing but unaccountable negligence could have prevented him from afterwards destroying a document of such a nature, and so fatal to his character. The Bank of England, in consequence of this information, proceeded to examine the private accounts kept by the prisoner with his firm, and they there found that the accounts of the parties, whose monies were fraudulently transferred, were regularly kept up, and the interest upon the dividends as regularly carried to them every half year, as if the original stock remained in being. In the particular case before you, the broker (Mr. Spurling) employed by the prisoner at the bar, sold out the stock in question on the 1st June; the proceeds were £2,950 2s. 6d., that is exclusive of the commission for the sale, which, according to the practice, the broker divided with the firm. This amount was paid over by the broker to the banking-house of Messrs. Martin and Co., who transacted business for Messrs. Marsh and Co., in the City, and is regularly noted in the day-book of the latter, by a clerk, by whom the entry was made at the dictation of the prisoner. But, in further management of the accounts in passing from the day-book to the private ledger, this sum appeared to have been carried to Mr. Fauntle-roy's private account. The general produce was, however, afterwards posted so as to keep up the accounts according to the original amount entrusted to the Bank by the respective customers.

You will, gentlemen of the jury, naturally ask yourselves, as this occurred so far back as the year 1815, how it happened that during the successive years which have intervened, the dividends could have been so managed by the prisoner in his accounts, as to escape the detection of his partner? The fact however was so. I am not called on, gentlemen, to explain it. I will merely ask you to remember that I have already told you that the business of the house was almost exclusively managed by the prisoner at the bar. Indeed he had the entire management for the firm of all the stock-market business. I will now explain to you, that at the period when the dividends become due, it is the custom for all bankers to send to the Bank of England lists of all the dividends

they have to receive on each stock, for instance, consols and four per cents.; and these lists are checked by the clerks at the Bank, who enter on the margin of the lists the number of dividend warrants. If any error should appear on the list, it is noticed by the clerk, and when the list is corrected, one of the partners attends two days before the documents are receivable by the public, signs the receipts, and takes away the warrants. Now, I will show that those lists were regularly prepared by the prisoner, and that they were always so prepared as to make them correspond with the account of stock allowed by the prisoner to remain in the Bank of England. For instance: Miss Young's stock was originally £5,450, out of which £5,000 had been sold by the forged letter of attorney; £450 was therefore the principal sum on which the dividends were afterwards paid. I will show you that, in the latter part of 1815, the list was made out for that sum in the hand-writing of the prisoner. In May, 1823, Miss Young purchased an additional £100 of stock; and I will show, that in the list of 1824, the entry at her name was for £550. The partner who went to the Bank of England to receive the dividend warrants, belonging to Marsh and Co., was Mr. Marsh. Nothing could be more convenient for the prisoner than this arrangement. Mr. Marsh, living out of town, came to it about once a quarter, was entirely ignorant of banking transactions, and therefore incapable of detecting these frauds. On his going to the Bank of England to receive the dividends when they became payable, he received the dividends on Miss Frances Young's stock, first as £450, and latterly as £550. These dividends he delivered to the prisoner, and then his duties at the Bank were discharged. The entry was made by the prisoner in the day book of the dividends to which the parties were entitled. The entry was not of the actual sum paid on the dividend warrants, but of the sums payable to the customers supposing no fraud had existed. The entry was made in this manner by the prisoner to avoid, as much as possible, all chance of detection.

There is another fact which I think it my duty to explain to you; the note of the broker for the sale of this particular stock, which Mr. Fauntleroy ought, were the transaction a *bona fide* one, to have transmitted to the owner, was found amongst his other papers in the private tin box, which contained the extraordinary document I have already read to you.

These, gentlemen, are the whole of the facts which I undertake to establish by evidence before you, against the prisoner at the bar. I shall

first prove the forgery, by producing the instrument, and proving, by the parties whose names are said to be affixed to it, that the signatures are not theirs. I shall next prove that the hand-writing in the body of the instrument is that of the prisoner himself. I shall prove that the power of attorney was in his hands before execution, that he got the stock transferred under it, and that he received the money which it produced. I shall then, by the production of the extraordinary document to which I have alluded, prove that he recorded these acts as his ; and from the accounts it will be clear that they were so continued by him, with great activity and caution, as to evade the detection of the forgeries, which he alone could have committed.

The evidence was as follows :—

James Tyson sworn, and examined by Mr. Sergeant Bosanquet (afterwards Sir John Bernard Bosanquet, a Judge of the Court of Common Pleas).— I have been a clerk seventeen years in the banking-house of Marsh, Sibbald, and Co. The prisoner, whose father was a partner at that time, was taken into the house as partner, in 1807. The firm then consisted of Mr. William Marsh, who resided at Watford, Sir James Sibbald, Mr. George Edward Graham, who was a colonel in the army, Mr. Josias Henry Stracey, and Mr. Fauntleroy, the father of the prisoner. In 1807, Mr. Fauntleroy, the father of the prisoner, died [the prisoner here sighed deeply]. I always considered that the prisoner, Fauntleroy, was the most active partner in the establishment. He transacted most of the business himself. Miss Frances Young was a customer, and banked at Marsh, Stracey, and Co.'s. [A document was put into the hands of the witness]. This is a warrant of attorney, dated 31st of May, 1815, for the transfer of stock from the name of Miss Young to that of Mr. Flower, a stock-broker, it purports to be attested by me, and another clerk in Marsh and Co.'s bank. It is signed "James Tyson;" and after the words "James Tyson," is the description of the witnesses, thus: "Clerks to Marsh, Sibbald, and Co., bankers, Berners-street." The hand-writing is not mine, it is that of Mr. Fauntleroy; I have no doubt of it, as I have been accustomed to see him write daily and hourly, for years. There is also the signature of "H. Fauntleroy" to the power of attorney. It is the hand-writing of the prisoner; it is signed "H. Fauntleroy, banker, Berners-street," as attorney for Miss Young. The

date, demand to act, and signatures are also the prisoner's writing. The prisoner then lived in Berners-street : the power of attorney is for the transfer of £5,000 stock. There was no other James Tyson, a clerk, in the bank.

John Watson sworn.—I have been for twenty-five years a clerk in the banking-house of Marsh and Co., up to the failure of the house ; there is no other John Watson, a clerk, in the house : I see the signature "John Watson," and the words "Clerks to Marsh, Sibbald, and Co., bankers, Berners-street," upon the power of attorney, which is now put into my hands ; it is the hand-writing of Mr. Fauntleroy. I do not know Miss Young ; my signature is put to this document as an attesting witness to the execution of the power of attorney. I did not see Miss Young sign the document, as my attestation purports. I see it is signed "Frances Young." The signature and date are in the prisoner's hand-writing. I see the demand for the transfer of the stock ; it is in Mr. Fauntleroy's hand-writing. The signature to the demand, "H. Fauntleroy," is the hand-writing of the prisoner. The words, "I demand the transfer of stock from Frances Young to —— Flower, Gent., stock-broker," &c., are the hand-writing of Mr. Fauntleroy.

John Browning sworn.—I am a clerk in the Bank of England, in the three per cent. consols office, and have been for twenty years. I see this power of attorney now put into my hands. I remember the prisoner bringing the power of attorney to the bank, and demanding to act as attorney for Miss Young. I see the words "I demand to act," they are written by the prisoner, and his signature is affixed. I saw the prisoner write the words "H. Fauntleroy," to the demand, and my signature follows as a witness to the demand ; he signed it in my presence in the sixth division in the consols office. The office is divided into different departments. I have the bank book in which the transfer of consols is entered. By referring to the day in question, the first of June, 1815, I find an entry of consols in the name of Miss Frances Young, of Chichester. On that day, Miss Young had the sum of £5,450 three per cent. consolidated annuities standing in her name. I have seen the book in which transfers of stock are entered. I hold it in my hand.

Mr. Attorney-General.—Before you look at the transfer book, say if the amount of stock transferred, entered in that book, is signed by the person transferring it ?



It is always signed by the person making the transfer.

The Attorney-General.—Now, Sir, see if there is an entry in that book of the transfer of £5,000 stock from Miss Young to —— Flower, stock-broker, on the 1st of June, 1815, and if it is signed, and by whom?

Witness.—I find an entry of £5,000 stock, transferred from the name of Frances Young to —— Flower, Gent., stock-broker. I find the name of Henry Fauntleroy, as attorney of Frances Young, spinster, of Chichester. The date “1st of June,” and the signature, “H. Fauntleroy,” are the proper hand-writing of the prisoner, and were written by him in my presence. My name, as the attesting witness, is written in the margin. The name of the stock-broker appears also to the transfer, thus, “Wm. Flower, Stock Exchange.” Miss Young had never, since 1815 (until now), more than £550 stock standing in her name.

After other formal proof relative to the transfer, the counsel for the prosecution called evidence to show that the bank had replaced the stock of which Miss Young had been defrauded by the prisoner's forging the warrant of attorney; it being absolutely necessary at that time (though the law is altered now) to show that she had no interest in the prisoner's conviction, before she could be allowed to prove that her signature to the warrant of attorney was a forgery.

Miss Frances Young sworn.—She stated—I resided in Chichester, in 1815, and Messrs. Marsh, Sibbald, and Co., of Berners-street, were my bankers. In the year 1815, I had the sum of £5,450 stock, in the three per cent. consols; Messrs. Marsh and Co. received the dividends for me. I invested a further sum of £100 a short time since. I received from Marsh and Co. regularly the dividends of £5,450 up to the period when I made the last purchase, and after that time I received a dividend upon £5,550. I never authorised Marsh and Co. to sell any part of the stock for me; I never authorised the prisoner to make a transfer of it. [A paper was put into the hand of witness.] I see the signature “Frances Young,” to this transfer; it is not my hand-writing.

By the Judge.—I never gave authority to any one to transfer the stock.

By the Attorney-General.—I was not in London in May or June, 1815. I was in Chichester.

Mr. James Tyson, clerk of Marsh and Co.—It was usual for Mr. Marsh, the senior partner in the bank, to go to the Bank of England to receive the dividends. Mr. Marsh lived in the country, and usually came to



London for that purpose. It was the practice for a list of the dividends to be made out, and for Mr. Marsh to take it to the Bank. The list was usually made out by Mr. Fauntleroy ; in fact I believe he always made out the list. The list contained the names of the parties to whom dividends were due, and the sums they were entitled to, and which Mr. Marsh was to receive. [A list is shown to the witness.] This is the list of the July dividend in consols, in 1824. It is endorsed by Mr. Fauntleroy, the prisoner at the bar, thus, "Three per cent. consols, July, 1824, Marsh, Stracey, and Co." I am positive the endorsement is the prisoner's hand-writing. The list contains names, and sums opposite to them. The whole are written by Mr. Fauntleroy. The list is alphabetical. The red figures are in the hand-writing of the bank clerk. In the list under the letter Y, is inserted the name "Frances Young," and the sum opposite the name is £5,550. When Mr. Marsh received the dividends he paid them to Mr. Fauntleroy, who kept an account.

Cross-examined.—This money is paid to the credit of Mr. Fauntleroy, in his private account. The sums are very large ; to the amount of £50,000. I don't know whether the money found its way into the funds of the bank, as that rests with the partners themselves. I don't know whether they were drawn out on Mr. Fauntleroy's account ; Martin and Co. were our bankers ; they received this money ; Mr. Stracey would know whether this was applied to Fauntleroy's account or not ; but the clerks know nothing of it. It was the custom to make entries to initials. We were merely ordered to make an entry of them in the ledger.

John Henry Spurling.—In 1815 I was clerk to Mr. Soloman, who was stock-broker to Marsh and Co. On the first of June, I sold out the sum of £5,000 consols for Miss Young, of Chichester. It is entered in the book. The amount of the money produced by the sale was £2,956 5s. Then deducting one per centage, there was left £2,950 2s. 6d. The amount was paid on the 1st of June, to Martin and Co., by my draft, to the account of Marsh and Co. I delivered the note of the sale to Marsh and Co.

The note of sale was now put in.

Samuel Plank.—I am a police officer, of Marlborough-street office. I apprehended the prisoner the 10th of September, at his banking-house, in Berners-street. There was a desk in the room where the prisoner was which he locked when I went in. He knew I had come to apprehend him. The key with which he locked it, I took from his watch at Marl-

borough-street; I delivered it to Mr. Freshfield. I went with Mr. Freshfield afterwards to the banking-house, and searched the desk with Mr. Freshfield. There was a private drawer in the desk, and from it I took some more keys. There were papers there, and they were brought away by me. The prisoner was examined that day. The keys found in the desk were kept in my possession till after the examination. When I went, after the examination, to the bank with Mr. Freshfield, we found two boxes. "Fauntleroy" was on one of them. I tried them with the keys, and they opened them; after that I locked the boxes, and delivered the keys to Mr. Freshfield; the boxes were taken away by Mr. Freshfield, in a coach.

Mr. Freshfield, the Bank solicitor.—I went to the house of Marsh and Co. with the officer, the day the prisoner was apprehended; I made search there. I received a key from Plank, the officer; it opened the private desk of the prisoner; in the desk were found some other keys. After the examination I returned to the banking-house, and in a room at the back of the partners' room, I found two boxes: one had the name of "Fauntleroy" upon it. There was another box by it. I desired the officer to try the box with the keys, that I might not take the box of any other person than the prisoner. He did so; and finding from the papers that it belonged to the prisoner, I took it home with me. In the course of the same night I went through the whole of one, and half of the other. One contained a number of deeds, probates of wills, letters of administration and official documents. In the other there were a great number of memorandums and diaries; also, the sale note produced. I found also the paper I now hold (the extraordinary document alluded to by the Attorney-General).

This paper was proved by Tyson to be in the prisoner's hand-writing. Some further formal proof being gone through, the evidence for the crown ended.

Mr. Justice Park.—Prisoner, the case on the part of the prosecution being now closed, and your counsel having examined the witnesses, they not being permitted to make a speech for you, you may, if you wish, say anything you think proper to the jury or to me.

Mr. Fauntleroy rose, and drawing a paper from his bosom, said, "My lords, I will trouble you with a few words." Then, wiping away a tear that forced itself down his cheek, which was of a deadly pallid hue, he proceeded, in a very low and sometimes hardly audible voice, to the following effect:—

“ My Lords and Gentlemen of the Jury—Overwhelmed as I am by the situation in which I am placed, and being uninformed in what manner I should answer the charges which have been alleged against me, I will endeavour to explain, so well as the poignancy of my feelings will enable me, the embarrassments of the banking-house in which I have been for many years the active and only responsible partner, and which have alone led to the present investigation ; and although I am aware I cannot expect to free myself from the obloquy brought upon me by my anxiety to preserve the credit and respectability of the firm, still I trust that an impartial narrative of the occurrences will obtain for me the commiseration of the well-disposed part of the community.

“ Anticipating the court will extend its indulgence to me, I will respectfully submit such observations as will tend to remove from influenced minds those impressions which, with sorrow I say, must have been made upon them by the cruel and illiberal manner in which the public prints have falsely detailed a history of my life and conduct, hoping therefrom I may deserve your compassion, although I may be unable to justify my proceedings, and secure my liberation, by a verdict of the jury ; yet they may be considered, in the mercy of the court, and a discerning public, as some extenuation of the crimes with which I stand arraigned.

“ With this object it is necessary that I should first state, shortly, the circumstances under which I have been placed during my connection with Marsh and Co.

“ My father established the banking house in 1792, in conjunction with Mr. Marsh and other gentlemen. Some of the parties retired in 1794, about which time a loss of £20,000 was sustained. Here commenced the difficulties of the house. In 1796, Mr. Stracey and another gentleman came into the firm, with little or no augmentation of capital.

“ In 1800, I became a clerk in the house, and continued so six years ; although during that time I received no salary, the firm were so well satisfied with my attention and zeal for the interest and welfare of the establishment, that I was handsomely rewarded by them. In 1807 my father died ; I then succeeded him. At this time I was only twenty-two years of age, and the whole weight of an extensive and needy banking establishment at once devolved upon me, and I found the concern deeply involved in advances to builders and others, which had rendered a system of discounting necessary, and which we were obliged to continue in consequence of the scarcity of money at that time, and the necessity of

making further advances to those persons to secure the sums in which they stood indebted.

“In this perplexed state the house continued until 1810, when its embarrassments were greatly increased, owing to the bankruptcies of Brickwood and others, which brought upon it a sudden demand for no less a sum than £170,000, the greater part being for the amount of bills which our house had accepted and discounted for these parties, since become bankrupts.

“About 1814, 1815, and 1816, from the speculations with builders, brickmakers, &c., in which the house was engaged, it was called upon to provide funds to the amount of nearly £100,000 to avert the losses which would otherwise have visited it from those speculations.

“In 1819, the most responsible of our partners died, and we were called upon to pay over the amount of his capital, although the substantial resources of the house were wholly inadequate to meet so large a demand.

“During these numerous and trying difficulties the house was nearly without resources, and the whole burthen of management falling upon me, I was driven to a state of distraction, in which I could meet with no relief from my partners; and, almost broken-hearted, I sought resources where I could, and so long as they were provided, and the credit of the house supported, no inquiries were made, either as to the manner in which they were procured, or as to the sources from whence they were derived.

“In the midst of these calamities, not unknown to Mr. Stracey, he quitted England, and continued in France, on his own private business, for two years, leaving me to struggle as well as I could with difficulties almost insurmountable.

“Having exposed all the necessities of the house, I declare that all the monies temporarily raised by me were applied, not in one instance for my own separate purposes or expenses, but in every case they were immediately placed to the credit of the house in Berners-street, and applied to the payment of the pressing demands upon it. This fact does not rest on my assertion, as the transactions referred to are entered in the books now in the possession of the assignees, and to which I have had no access since my apprehension. These books, I understand, are now in court, and will confirm the truth of my statement; and to whatever account all the sums may be entered, whether to that of stock, of exchequer bills, or to my private account, the whole went to the general funds of the banking house.

“I alone have been doomed to suffer the stigma of all the transactions ; but, tortured as I have been, it now becomes an imperative duty to explain to you, gentlemen, and through you to the world at large, that the vile accusations heaped upon me, known to be utterly false by all those who are best acquainted with my private life and habits, have been so heaped upon me for the purpose of loading me with the whole of the obloquy of those transactions, from which, and from which alone, my partners were preserved from bankruptcy. I have been accused of crimes I have never even contemplated, and of acts of profligacy I never committed ; and I appear at this bar with every prejudice against me, and almost prejudged. To suit the purposes of the persons to whom I allude, I have been represented as a man of prodigal extravagance ; prodigal indeed I must have been, had I expended those large sums which will hereafter be proved to have gone exclusively to support the credit of a tottering firm, the miseries of which were greatly accelerated by the drafts of two of its members to the amount of nearly £100,000.

“I maintained but two establishments, one at Brighton, where my mother and my sister resided in the season—the expenses of which to me, exclusive of my wine, were within £400 per annum—one at Lambeth, where my two children lived, from its very nature, private and inexpensive, to which I resorted for retirement, after many a day passed in devising means to avert the embarrassments of the banking-house. The dwelling house in Berners-street belonged solely to my mother, with the exception of a library and a single bed-room. This was the extent of my expenditure, so far as domestic expenditure is concerned. I am next accused of being an habitual gambler, an accusation which, if true, might easily account for the diffusion of the property. I am, indeed, a member of two clubs, the Albion and the Stratford, but never in my life did I play in either, at cards or dice, or any game of chance ; this is well known to the gentlemen of these clubs ; and my private friends, with whom I am more intimately associated, can equally assert my freedom from all habit or disposition to play. It has been cruelly asserted, that I fraudulently invested money in the funds to answer the payment of annuities, amounting to £2,200 settled upon females. I never did make any such investments ; neither at home nor abroad, in any funds whatever, have I any investment ; nor is there one shilling secretly deposited by me in the hands of any human being. Equally ungenerous, and equally untrue it is, to charge me with having lent to loose and dis-

orderly persons large sums, which never have, and never will be repaid. I lent no sums, but to a very trifling amount, and those were advanced to valued friends. I can, therefore at this solemn moment, declare most fervently, that I never had any advantage beyond that in which all my partners participated, in any of the transactions which are now questioned. They, indeed, have considered themselves as partners only in the profits, and I am to be burthened with the whole of the opprobrium that others may consider them as the victims of my extravagance. I make this statement, not with a view to criminate or to exculpate myself; but, borne down as I am with calamity, I will not consent to be held out to the world as a cold-blooded and abandoned profligate, ruining all around me for the selfish gratification of vice and sensuality, and involving even my confiding partners in the general destruction.

“Gentlemen, I have frailties and errors enough to account for. I have sufferings enough, past, present, and in prospect; and if my life was all that was required of me, I might endure in silence; though I will not bear the odium on my memory, of having sinned to pamper delinquencies to which I was never addicted. Thus much has been extorted from me by the fabrications which have been cruelly spread amongst the public, that very public from whom the arbiters of my fate were to be selected. Perhaps, however, I ought to thank the enemy who besieged the prison with his slanders—that he did so while my life was spared to refute them, and that he waited not until the grave, to which he would hurry me, had closed at once on my answer and my forgiveness. There is one subject more connected with these charges to which I am compelled to advert, and I do so with great reluctance. It has added to the other charges brought against me, lest the world should think there was any vice in which I was not an adept. I have been accused of acting treacherously towards the female who now bears my name, having refused to make reparation until threatened by her brother, and of having deserted her at a moment when she had the greatest claim on my protection. Delicacy forbids me entering into an explanation on this subject further than to declare, that the conduct I adopted on that occasion was uninfluenced by the interference of any individual, and arose, as I then considered, and do still consider, from a laudable and honourable feeling on my part; and that the lady’s brother, so far from coming forward at the time alluded to, was on service in the West Indies. Could all the circumstances be exposed, I feel convinced that every liberal-minded man would applaud my

determination, and I feel satisfaction in stating, that the lady in question has always been, and still is, actuated by the best of feelings towards me.

“ I have now only to apologise to the court for having entered so much at length into the statement of my unfortunate case, and in conclusion I have to express my perfect confidence, that it will receive every favourable consideration at your hands ; and I fully rely that you, gentlemen of the jury, will give an impartial and merciful decision.”

The prisoner having concluded his address, sat down evidently exhausted by the effort and overcome by his feelings. A glass of water was brought to him, of which he took a little ; and while the witnesses to his character were examining, he leant his head on his hand, in which he still held his handkerchief in a manner to cover his face, as if unwilling to be seen by his former friends. While they were giving their evidence he often appeared to weep.

The following witnesses were called to the prisoner's character ; and examined by Mr. Gurney.

Mr. John Wilson knew Mr. Fauntleroy about sixteen years, during the whole of which time he maintained an unspotted character ; he always considered him a man of the strictest integrity.

Sir Charles Forbes had known Mr. Fauntleroy twelve years, and always considered him an honourable and obliging gentleman, and an upright man of business.

Mr. Wray knew him fifteen years, and always considered him deserving of the highest esteem and respect.

Mr. James Barton knew Mr. Fauntleroy twenty-seven years, and always esteemed him a kind, an honourable, and an upright man.

Mr. D. Robinson knew him eleven years, during which time he maintained as high a character as man could possess.

Mr. Wadd was acquainted with Mr. Fauntleroy eleven years ; his character was most excellent.

Mr. Lindsey knew Mr. Fauntleroy ten or twelve years ; he did not know a man who appeared to possess more kind or honourable feelings.

Mr. Anthony Browne was acquainted with him sixteen or seventeen years, and always entertained the highest opinion of his honour and integrity.

Mr. Wyatt had known Mr. Fauntleroy twelve years ; he was a most honourable, kind-hearted, and benevolent man.

Mr. Montriau knew Mr. Fauntleroy twelve years; he was a most benevolent man, and had the highest character for integrity.

Mr. Montague was acquainted with Mr. Fauntleroy upwards of twelve years, and never knew a more kind-hearted and humane man. His character was most excellent.

Mr. Vernon was acquainted with him sixteen years; he always had the character, and appeared to be a very kind and a very honourable man.

Mr. Ross knew Mr. Fauntleroy fourteen years; he had the character of being strictly honourable and upright.

Mr. Church knew Mr. Fauntleroy twelve years, and had much dealing with him. He was always strictly honourable and upright in all his transactions with witness, and had universally the character of the strictest integrity and honour.

Mr. Yatman was acquainted with him twelve years; he always possessed a character of the highest excellence.

Mr. Boshnel was acquainted with Mr. Fauntleroy fifteen years, and always considered him a perfectly honest and honourable man.

Mr. Justice Park addressed the jury to the following effect:—The prisoner, he said, was indicted for forging a power of attorney, for the transfer of stock belonging to Miss Frances Young; and for uttering such power of attorney knowing it to be forged. There were other counts in the indictment, charging the prisoner with an intent to defraud the Bank of England, and also a person of the name of Flower, to whom the transfer was made. The forgery they might put out of their consideration, as there was no evidence of its having been committed in London; and they, as a London jury, could not try a prisoner for any crime not committed in the city; but if they should think that the count, which charged the prisoner with uttering the forged power of attorney at the Bank of England, which was in the City of London, knowing it to be forged, finding him guilty on that count, was the same in its legal effect as if he were found guilty on all the counts in the indictment.

The Attorney General and the prisoner had both called on them to dismiss all reports from their minds; and he (Mr. Justice Park) had allowed the prisoner to proceed in the statement he had made in answer to those cruel charges, though that statement did not go at all to the point of the case to be decided, as the only question for their consideration was, whether the prisoner uttered the power of attorney given in



evidence in the manner imputed to him? That question contained three points: the first was, was that instrument forged? the second, did the prisoner utter it? the third and most important, did the prisoner at the time of uttering it know it to be forged? If they were satisfied by the evidence that those three things were proved, then the prisoner's guilt was legally proved, and it would be their duty to find a verdict in conformity with that evidence. The jury had heard other indictments against the prisoner read, but they must put them out of consideration, as they were only to attend to the case on which they had heard evidence; but if they were satisfied by the evidence they had heard, that the crime imputed to the prisoner had been proved, if he had the character of an angel, it would be their duty to find him guilty. Mr. Justice Park, in making some further observations, characterised the document found in Fauntleroy's chest as the most extraordinary that had ever been produced during the long annals of crime in a court of justice.

The jury then retired to deliberate on their verdict. During their absence, which lasted for twenty minutes, Mr. Fauntleroy resumed his seat, and appeared extremely affected. A sudden rush of the crowd at the door of the court announced the return of the jury. The prisoner stood up. Whilst the clerk of the arraigns called over the names of the jury, and repeated the formal words of the law—"How say you; are you agreed upon your verdict, is the prisoner at the bar Guilty, or Not Guilty?" the most intense interest was manifested by every person present. The foreman replied, "Guilty of uttering the forged instrument, knowing it to be forged."

A short conference then took place between the bench and the counsel for the prosecution, which referred to the propriety of proceeding with other indictments. Upon its conclusion,

Mr. Justice Park addressed the prisoner,—“Henry Fauntleroy, the learned Attorney-General does not feel it necessary, in the discharge of his public duty, to proceed further with the indictments which have been preferred against you. It is no part of my painful duty to pronounce the awful sentence of the law, which must follow the verdict which has just been recorded. That unpleasant task will devolve on the learned Recorder, at the termination of the sessions; but it is a part of my duty as a Christian magistrate, to implore you that you bethink yourself seriously of your latter end. According to the constitution of this country, the prerogative of mercy is vested in the crown. With that I have

nothing to do. I do not say that in your unhappy case the extension of mercy is impossible; but I am afraid that, after the many serious acts which, under your own hand-writing, have been proved against you, involving so many persons in ruin, you would only deceive yourself by indulging in any hope of mercy on this side of the grave. Let me then beseech you to turn your heart to the contemplation of your awful situation, and whilst it is yet in your power, to use all your exertions to make peace with your God."

Fauntleroy's counsel, Mr. Alley and Mr. Broderick, endeavoured, on a point of law, to arrest the judgment as far as it perilled the life of their client. The prisoner petitioned the crown, and his case was argued before the twelve judges on the 24th and 25th November, 1824. It was then contended that the uttering of a forged power of attorney, of which the prisoner was convicted, did not come within the 2 George II., c. 25, s. 1, which made forging a deed a capital offence, but did not mention a power of attorney. The only act applying to his case, it was insisted, was the 37th George III., c. 122, which awarded transportation for seven years, if the names of the attesting witnesses were forged to a power of attorney. The judges, however, affirmed the conviction, thus tacitly deciding that the power of attorney in question—one to transfer government stock—being sealed and delivered, was a deed within the former statute; and so Fauntleroy was left to his fate. He received his sentence, and was hanged on the 30th November, 1824. The crowd present at his execution amounted to many thousands. He met his end with composure, though visibly in a state of semi-insensibility. His eyes were closed, and his appearance was wretched in the extreme. His death excited general sympathy at the time, not from any palliating circumstances in his offences, but on account of the extreme severity of the retribution.

## AN IMPUDENT CLAIM TO THE BARONY OF STAFFORD.

EVERY one travelling by the North Western Railway must have remarked on an eminence near the town of Stafford the picturesque ruins of an ancient castle. This feudal structure was a possession of the nobles who bore the title of Stafford—persons illustrious in English history; and it is now the property of their descendant and representative, George Jerningham, Lord Stafford. “The remains of this castle,” says Nightingale in his ‘Description of Staffordshire,’ “are placed about a mile and a half to the south-west of the county town, on the summit of a singular hill, the ascent to which, on all sides, is extremely smooth and gradual; so much indeed is this the case, that we strongly suspect it has originally been levelled by art for the sake of embellishment. The chief, and indeed almost the only portion of the castle now standing is the keep or stronghold, placed on an artificial mount, of an oblong form, measuring one hundred and five feet by fifty.”

So much for the castle. The indisputable claim of its present noble owner to the barony of Stafford is as follows:—

Sir George William Stafford Jerningham, Bart., the present Baron Stafford, inherits that dignity through his great grandmother, Mary Howard, wife of Francis Plowden, Esq., granddaughter of the so-unjustly attainted Viscount Stafford, and mother of Mary, wife of Sir George Jerningham, the fifth baronet. This barony was created by patent, dated 12th September, 1640, and conferred upon Mary Stafford (jointly with her husband, Sir William Howard, K.B.), sister and sole heiress of

Henry Stafford, thirteenth Baron Stafford, a barony created in 1299, but forfeited by Edward de Stafford, Duke of Buckingham, Lord High-Constable and K.G., who was beheaded in 1521. Henry Stafford, the duke's son and heir, was restored in blood by an act of Parliament, passed in the first year of the reign of Edward VI., whereby it was enacted "That the said Henry, Lord Stafford, and the heirs male of his body, may be taken and reputed as Lord Stafford, and that the said Henry be restored in blood." His lordship was summoned to Parliament from 1548 to 1558. He married Ursula, daughter of Sir Richard Pole, K.G., by Margaret Plantagenet, Countess of Salisbury, niece of Edward IV., and was great-grandfather of the Mary Stafford who married Sir William Howard, Viscount Stafford. The iniquitous attainder of this nobleman was repealed in 1824. In consequence, the present Sir George Jerningham, the seventh baronet and the grandson of the Sir George who married the above Mary Howard's daughter, succeeded to the barony; the House of Lords resolving, the 6th July, 1825, that "Sir George Jerningham had made out his claim to the title, dignity, and honour of Baron Stafford, under certain letters patent bearing date the 12th September, in the sixteenth year of the reign of King Charles I." His lordship assumed by sign manual, in 1826, the additional surname and arms of Stafford.

It was a few years previous to the restoration of Sir George Jerningham to the family honours, that the audacious attempt was made which occasioned the following trial. The parties implicated were James Stamp Sutton Cooke, Richard Stafford Cooke, James Russell Miles, and Richard Jenkinson. They were indicted for a conspiracy to disquiet and disturb Sir George Jerningham, Bart., in the possession of certain estates, by unlawful means and devices; to molest his tenants; and to obtain money from them by falsely pretending that the title of Richard Stafford Cooke to the estates had been admitted by Sir George Jerningham. To this indictment, which was found in 1823, and removed into the King's Bench, James Cooke and Jenkinson pleaded not guilty, Miles never appeared, and Richard Cooke pleaded in abatement, which last plea was demurred to. The record was consequently sent down to Gloucester for the trial of the two defendants who had pleaded not guilty, and they were tried there accordingly, at the Spring Assizes, 1824, before Sir James Allan Park, a Judge of the Court of Common Pleas.

The counsel for the crown were, Mr. Taunton (afterwards Sir William

Elias Taunton, a Judge of the Court of King's Bench), and Mr. Oldnall Russell (afterwards Sir William Oldnall Russell, Chief-Justice of Bengal).

James Cooke defended himself, and Jenkinson had for his advocate Mr. Campbell (now a Peer, and Lord Chief-Justice of the Court of Queen's Bench).

The particulars of the case were fully detailed by the leading counsel for the prosecution. He stated, that an application was made by Mr. James Stamp Sutton Cooke to Sir George Jerningham, in November, 1822. This application, claiming the barony of the estates for his brother Richard, was, of course, unsuccessful, and the conspiracy to defraud was then first embodied. James Stamp Sutton Cooke forthwith gave a dinner at his lodgings at Somer's-town; one of his guests, named Crank, he appointed his secretary, receiving £50 for such appointment. On the 30th of December they met at Stafford, and associating themselves with one Smith, a sheriff's officer, went on the same day to Stafford Castle. This castle was shewn to strangers, and when the party arrived, Smith told the old woman who lived in and exhibited the castle, that the two strangers with him wanted to see the castle; they were admitted, and then it was that the defendant Cooke declared his brother the heir of the estate, and took possession; he then endeavoured to bribe the old woman; she, however, instead of obeying the mandate of her new lord, Richard, Baron Stafford, applied instantler to Mr. Seckerson, the steward of Sir George, who, on his arrival at the castle, finding Mr. Crank, the secretary of the new baron, in possession, forthwith ejected him. The party immediately set to work. They first enlisted a Stafford schoolmaster, of the name of Jenkinson, who was one of the defendants to this indictment. Their next step was to publish notices, addressed to the tenants of Sir George. Mr. James Cooke had now taken his abode in the town; where, in all due pomp, and apparently oppressed with business, he received such of the tenants of Sir George as his notices had induced to pay him a visit. The first notice served was dated on the 30th December, 1822, from Stafford Castle, and cautioned the tenants not to pay any rents to Sir George Jerningham or his agents, or to any other person than to Richard Sutton Cooke, as legal baron of Stafford, or to his bailiff, steward, or agent. On the 1st of January the second notice was dated. It was in effect, a caution to the tenants, that if they did not pay their rents and arrears to Baron Richard, they would be dis-

trained on. It offered a reduction of one-half the rents for the ensuing seven years, and pledged the new baron not to eject any one of his tenants from his occupancy. Men were likewise employed to cut down timber on the estate ; and, to quiet the scruples of these labourers, an axe was drawn round the bottom of the trunk of such as were to be cut down, under the persuasion that this ceremony gave a legal title to the cutting down. Many were the trees that fell in pursuance of this system of devastation ; they were sold to those who had no objection to advancing money upon such security. Sir George, however, obtaining an injunction against the further cutting down of trees, that plan was for the time abandoned. James Stamp Sutton Cooke also appointed gamekeepers to the manors of Sir George Jerningham. For these acts of trespass and fraud the present indictment was preferred. On the 13th January a third notice was served on the tenantry, fixing the 16th January for the payment of rents, at the George inn, for which receipts were to be given by James Stamp Sutton Cooke. Jenkinson was stationed at the room door in which the steward of Sir George was sitting to receive the rents, at the Swan inn, for the purpose of using such misrepresentations as should induce the tenants to repair to the George inn, to pay their rents to the agent of Baron Richard. The result was, that James Stamp Sutton Cooke, as the solicitor, and young Crank, as the agent, received from some few intimidated tenants the amount of £10 for rent, besides a whole hatful of halfpence. A distress for rent was then put into the house of Mr. Seckerson, Sir George's agent, whilst he was attending his professional duties at the Stafford Quarter Sessions ; but constables were called in, and the agents of Cooke expelled. A second distress was put in the house in the afternoon, by four men forcing themselves up stairs, and intruding upon the privacy of Mrs. Seckerson and some female visitors of that lady. James Stamp Sutton Cooke next applied to an old maiden lady named Mary Peake, for the purpose of endeavouring to induce her to acknowledge his brother as her landlord. With this view he told her that Sir George had given up possession to his brother, who was kept out of his rights only by Mr. Seckerson. He further said, that the House of Lords, the House of Commons, and the King himself had acknowledged the rights and titles of his noble brother. With this maiden lady, however, he was unsuccessful in every particular. Under pretences equally false, he obtained the sum of £8 from a man named Rogers, and £17. 10s. from another named Dudley. To these

men he produced a letter, which, he said, he had received from Sir George, although he had never received any letter of any description whatever from that baronet. The time having arrived when the noble lord was to make his formal entry into Stafford, it took place the 5th March, with all due display of ribbons. First appeared a hired London carriage; on one of the pannels were painted the arms of the Stafford family; on the dickey-box sat Baron Richard and the Hon. James Stamp Sutton Cooke; inside sat Mr. Miles; the horses were unyoked, and that which is usually done on such occasions was done by the mob of the day. Speeches were also delivered, and ale was plentifully distributed. A dinner, too, was given, at which speeches were again made, and the false pretensions previously made by the Hon. James Cooke, were repeated by Baron Richard. The next act of the farce, or comedy, was the holding of Courts Leet and Courts Baron, preceded of course by formal notices in the usual technical form of words. These were signed "John Russell Miles, Chief-Steward." On the day fixed the courts were duly held, a Mr. Ward acting as bailiff, with a wand in his hand duly painted and emblazoned, and John Russell Miles officiating as chief-steward. Mr. Seckerson remonstrated, and warned the defendants of the illegality of their proceedings; but his remonstrances and warnings were unheeded, and the courts were held with much form and ceremony.

It was stated, that Mr. Richard Cooke had pleaded his peerage in abatement; and Miles, another of the defendants, was out of the country.

Witnesses were examined, who proved the circumstances above mentioned.

The jury, after five minutes deliberation, returned a verdict in the following terms:—"James Stamp Sutton Cooke, guilty of conspiring with his brother, Richard Stafford Cooke; Jenkinson, not guilty." An endeavour was subsequently made in the Court of King's Bench to stay the judgment against James Cooke on the ground (since two persons at least must be concerned in a conspiracy), that he was found guilty of conspiracy with only one person, who had not been tried, and who was still to be presumed innocent. The Court, however, overruled the objection.

## THE DISPUTE AS TO WHO WAS THE RIGHTFUL HEIR OF THE O'HARA FAMILY.

THIS was an action of ejectment which was tried, for the second time, at the Antrim Summer Assizes, 1825. The lessor of the plaintiff, in fact the real plaintiff, was John Hamilton O'Hara, otherwise Collet ; and the defendant was a minor, his half brother, Henry Hutchinson Hamilton O'Hara.

Mr. North stated the circumstances of the plaintiff's case. The lessor of the plaintiff, John Hamilton O'Hara, claims to recover the estate of Crebilly and Carte, as son and heir of the late Francis Hamilton O'Hara, who took it by virtue of the will of his father. The name was originally Hamilton, but the estate being left by a gentleman called O'Hara, that name was added. The plaintiff is the son of a French woman, Madeline Collet, daughter of a small proprietor of land in France. She lost her father at six years old. At the age of twenty-five or twenty-six, she was living with a Miss Preston, as a companion to that lady in Ireland ; she was subsequently left dependent on the friendship of Miss Preston, who advised her to advertise for a situation as governess in a respectable family. Mr. O'Hara saw the advertisement ; waited on her, and engaged her as a friend and companion of his intended wife and his mother. He was liberal in his offers ; Madeline Collet accepted them, and was sent to his mansion house in his carriage, accompanied by a black servant, Benjamin Philips, now dead. Finding that Mr. O'Hara was absent, she asked for his mother ; and an equivocal answer was returned. At length she saw the Rev. Mr. Devlin, a Catholic clergyman, who understood the French lan-



guage, and found in him a friend and pastor. Madeline Collet stated her case to him. Mr. Devlin felt for her situation, and explained to her that Mr. O'Hara had no mother alive, and had no intention of marrying. She was alarmed, and proposed to fly the country. Mr. Devlin consoled her, and advised her to stop till Mr. O'Hara's return; and proposed to use his influence with him to render her situation comfortable. Eight or ten weeks elapsed before Mr. O'Hara's return. Miss O'Kane, a respectable neighbour was introduced to her by Mr. Devlin, as a friend and acquaintance. Mr. O'Hara returned. He was about thirty years of age, of fine personal accomplishments, a literary man, and a political writer at the time the volunteers of Ireland were trying to give freedom to their country; but pleasure became his object, and he fell into the error that he had a right to any gratification he could command, and flattered himself he could gain an easy conquest of Madeline Collet. But he found in her a woman of firmness and piety, who resisted his base proposals, and rejected them with scorn. He tried the arts usual in such cases, and they failed. She became more dear to him, and he adopted a new mode of attack: he threatened Mr. Devlin, said he would dispossess him, and told him that the only mode by which he could save the honour and virtue of his friend was, to celebrate a marriage between him, Mr. O'Hara, and Madeline Collet, according to the rites of his church. This was an illegal marriage, as Mr. O'Hara was a Protestant. Mr. Devlin refused—till Mr. O'Hara said that, on his father's death, he would marry her by a Protestant minister according to law. This argument and promise prevailed, and the marriage was celebrated in the parlour at Crebilly House, according to the rites of the Church of Rome, in 1786. This fact would not be disputed—it was proved on a former trial by Eleanor Dowdal or M'Connel, and was an undoubted truth. This is a great leading feature in this cause. After this marriage Mr. O'Hara's love increased; and he determined to go to Scotland and confirm the marriage, as the lady was then in the family way. They set out in the autumn of 1787, accompanied by Benjamin Philips, and a servant called John Johnston; and at Dumfries, the marriage was formally acknowledged by them in the presence of competent witnesses. They remained a few days there cohabiting together, and then went to London. In London, Mr. O'Hara introduced his wife to his select friends; among others, to the celebrated Dr. Lawrence, brother of the Archbishop of Cashel, and the first civilian of his day—a gentleman fully able to satisfy Mrs. O'Hara that the marriage was a lawful one;

when this unfortunate woman was afterwards abandoned by her inconstant husband, Dr. Lawrence honoured her as the wife of his friend, and always addressed her as Mrs. O'Hara in his letters. Mr. O'Hara felt a desire that the child, of which his wife was pregnant, should be born in Ireland; they returned to Crebilly, and on the 13th of June, 1788, the warmest wishes of Mr. O'Hara were realised by the birth of the plaintiff. This birth was celebrated by bonfires as for the heir of Crebilly estate; and on the third day the child was baptised a Protestant, as the heir of the joint houses of Hamilton and O'Hara, and not like an illegitimate child, in his mother's religion. Devlin's niece, Mary Dempsey, became the nurse of the child. Mr. O'Hara continued to reside at Crebilly for some time, till an unfortunate occurrence took him to France. His sister, Mrs. Gumbleton, wife of Richard Gumbleton, Esq., was there at the point of death: he set off for that country, and Mrs. O'Hara followed him. Mr. O'Hara's father was then living in Portglenone, which was the cause why Mrs. O'Hara might not then receive all the honours of a wife. Mrs. O'Hara had a second pregnancy, and bore a dead child. His affections for her began at this time to wane and to waver; and his father now proposed to him to marry. He sent his wife to London, promising to follow her in two or three days; and packed up his clothes, and sent them with her. He, however, never followed her. In London she bore him a second son, and while she was in the pangs of child-birth, he celebrated a marriage with Miss Jackson, daughter of the Right Hon. Richard Jackson, and niece of Charles, Earl O'Neill. With her he lived twelve years—it was an unhappy marriage—his conscience tormented him—she bore him no children, and closed her miserable life at the end of that period. Mrs. O'Hara was not apprised of the second marriage for a year and a-half, and received no support from Mr. O'Hara; but in 1795 he came to London, and although he abandoned her, he determined to take the children from her, and demanded them. She gave them up for their own interest, and he put them to a public school. But he determined that the fact of his bigamy should not be discovered by her, and to prevent this he kept her in poverty. She complained to Mr. Graham, the presiding magistrate at Bow-street. Mr. O'Hara was crafty, and offered her money if she would sign a promissory note for it in her own maiden name; she did so, and was arrested and imprisoned for the amount. She sought for liberation by an insolvent act; but to prevent investigation, he paid the debt and

costs himself. This was repeated a second time. He then gave information against her as an alien, and she would have been exiled from her adopted country, had not Dr. Lawrence interposed and obtained a protection for her to remain in England, by the name of O'Hara. In 1803, Mrs. Jackson died, after which Mr. Graham recommended her to apply to a legal defender, Mr. Knowles. Friends now appeared for her, and she made her way into the Court of King's Bench, in London; and Lord Ellenborough directed a lawyer to inquire into her affairs. He did so, and the result was, that Mr. O'Hara and his wife came together again, and actually lived together as man and wife from 1810 to 1817; and then both returned to Crebilly. Mr. O'Hara lost his affection for his eldest son, the plaintiff, but placed it on his second son, Claude Hamilton O'Hara. He became the victim of the designs of a wily man, residing in an insignificant village, near Crebilly, called Balymena, who was scheming to attain possession of Crebilly estate, on behalf of some of his own relations, and, to promote his ruin, brought about a marriage between O'Hara and a relation of his own name, Elizabeth Duffin, in 1819. Mr. O'Hara did not long survive this marriage; he died in 1823. Miss Duffin was only eighteen years of age at this event. After his father's death, the lessor of the plaintiff lost no time in the recovery of his lawful estate. He brought an ejectment against the present minor defendant, who is the child of Duffin. Mr. Harrison became the receiver of the estate, and this cause was tried at bar in Dublin, which ought to have been tried in this court. It was tried before the Lord Chief Justice Bushe, whose penetration into the human heart transcends all his other acquirements, gifts, and talents. Mrs. O'Hara was examined, and her evidence carried conviction to his lordship, the jury, and every spectator. John Johnson was there for examination; the trial lasted four days, but during the first night he was bought off: he got £15., from whom he could not say—but he was gone. Next day the jury called for Johnson; they heard of his loss with dismay, but the trial went on. The absence of Johnson wrung from the Lord Chief Justice a reluctant charge, and from the jury a sorrowful verdict for the defendant. His lordship felt as a man for Mrs. O'Hara, but, as a judge, he was bound to charge against her on the evidence then adduced. "For my own part," said Mr. North, "I don't care a straw for Johnson's evidence—a man capable of taking the paltry bribe of £15.; on it, therefore, I place no reliance. Produce him we will; but I call for your verdict, and I know I shall obtain it, on two other classes of

evidence which that of Johnson may corroborate : first, that of Mrs. O'Hara herself, and the simplicity and honesty which appear in her countenance and language ; and, secondly, that of the conduct of Mr. O'Hara himself."

John Johnson and Madeline O'Hara were then examined and cross-examined : the latter at great length.

John Johnson, sworn—examined by Mr. Daniel O'Connell.—Lives at Portavo, county of Down ; and lived with the late Mr. O'Hara ; was first acquainted with him in 1787 ; accompanied him to London in that year, from Belfast ; Mrs. O'Hara and another servant were with them ; they went by Scotland. At Dumfries, Mr. O'Hara, being in the room with Gibson, the landlord of the inn, he said to him, " I am under some uneasiness as to the validity of an Irish Catholic marriage, but I know that this is sufficient." He then rose and took the lady by the hand, and said, " I now take this lady to be my lawful wife, in the presence of you and these witnesses. I only want one bed for my wife and myself, and one for my servants, and I mean to stop two or three days." They then went on to London, and Mr. and Mrs. O'Hara lived always as man and wife. When witness had been three or four days in London, he was sent home, and was again in his master's service ; has seen Mrs. O'Hara lately.

Cross-examined by Mr. Wallace.—Had heard of Miss Jackson ; she was married to Mr. O'Hara in 1791, in Belfast church ; witness was present at the execution of the marriage settlement deed, and witnessed it by Mr. O'Hara's desire ; did not take upon him to advise his master ; was base enough to sell his old mistress for £15 ; is sorry for it ; he was drunk when he was bribed, on the evening of the 21st, in Dublin : he got drunk with a stranger : it was in Bolton-street ; disclosed to Mr. O'Hara's agent the bribery about eight or ten days after the trial in Dublin, at Belfast ; he was promised £500, and the £15 he got was in part of it.

Madeline O'Hara, examined by Mr. Gilmore.—Is a native of France ; came to Ireland in December, 1786, in company with the Hon. Miss Preston, as a companion, and to attend on her person ; continued with her about three months, then advertised in the newspaper for a place as governess or companion to a lady ; Mr. O'Hara sent his valet, Pat Lavery, to engage her to be housekeeper and lady companion to his mother. She agreed to this proposal ; was to have twenty-five guineas

per annum, and a table separate from the servants ; went to and saw Mr. O'Hara then, and next morning she went to his country house in his chariot, and attended by his black servant, Ben Philips, who is dead ; stopped one night at Newry ; found two maid-servants, a cook, and a housemaid at Crebilly ; could not then speak English ; had remained only one day, when Mr. Bell, the land-agent, came and told the servants to attend her ; next day the Rev. Mr. Devlin, Roman Catholic priest, called on her ; he spoke French well, and sent her Miss O'Kane to keep her company ; Mr. O'Hara arrived in Crebilly about the 1st of June ; she had come there on the 17th or 18th of March ; when he arrived, she wanted him to send her by a chaise back to Dublin, as she found she was deceived, and he had no mother living with him ; he requested her to stay for a few days, to make preparations for a Russian nobleman whom he expected, which she did ; she consented, and he began to court her ; and promised to marry her. Three weeks after she was married by Mr. Devlin, in presence of the black and Nelly Dowdal, *alias* M'Connel ; no more were present on account of Mr. Devlin : witness was present at the last trial in Dublin. Nelly Dowdal, *alias* M'Connel, was there and was examined, but is since dead ; continued at Crebilly three months after her marriage, and was treated by all as Mrs. O'Hara, and sat at the head of the table, with two foreign noblemen there on a visit ; went with them on an excursion to Slemish ; three months after went to Scotland with Mr. O'Hara ; Ben, the black, was with them, and at Belfast they hired J. Johnson ; she was not then in a state of pregnancy. At Dumfries, Mr. O'Hara took her by the hand, and said in the presence of Gibson, Benjamin, and Johnson, " I take this lady to be my wife, as I had some doubts of the Catholic marriage, but I know this to be sufficient." She then said, " I take this man to be my husband." The waiter might have been present. Mr. O'Hara previously told her what she should say, and taught her. Went to London with him, and met with Mr. O'Hara's father, Dr. Lawrence, Colonel Bagwell, and Counsellor Thomas, and was introduced to them all by Mr. O'Hara as his wife ; returned to Crebilly in April ; was then pregnant ; it was the wish of Mr. O'Hara that the child should be born in Ireland. It was born there on the 13th of June ; was not present at its christening ; saw Mr. Babington, the Protestant clergyman, come to Crebilly-house for the purpose of baptizing it ; it was a boy, and was called John Francis O'Hara, and is the present plaintiff ; witness suckled her own child : the dry nurse was Mrs. Demp-

sey, niece to Mr. Devlin : heard from Mr. O'Hara of public rejoicings for the birth of the child. Remained at Crebilly till November in the same year, and still continued to act as mistress of the house ; she then went to join Mr. O'Hara in France, where she met him after he had buried his sister there ; saw some Irish gentlemen from the college, and sat at table with them, Mr. Cassidy, Mr. O'Neill, and Mr. Brenn : believes Mr. Brenn is still alive. Continued in Paris till May, 1789, then returned to Crebilly straight through Scotland. About a year after bore a dead child, eighteen or nineteen months from the birth of the first child ; had then a coach and four for the sake of the child and nurse ; had only a chariot before ; remained about two or three years at Crebilly ; then went to Portglenone for about three months, and afterwards to London with the nurse and child, and a black servant, but not with Mr. O'Hara, who said he had business in Dublin, and would be in London, by way of Holyhead, as soon as she would ; she took over his linens, but left her letter of correspondence with Mr. O'Hara, and a written promise of marriage he had given her, behind at Crebilly. She remained in London five or six years, and she bore her second son after her arrival there. She lodged at a shop near Chelsea. During this time she received large sums of money, by Dr. Lawrence, from Mr. O'Hara, but it was too little to maintain her, and she worked at the mantua and dress-making to support herself. Here two letters were handed to her. They were from Dr. Lawrence to her, and one of them had contained money, addressed to Mrs. O'Hara by Dr. Lawrence in his own hand-writing. She then lodged in Bury-street, London. Mr. O'Hara demanded the youngest son from her, as he had never seen him, and promised to send her more money as an inducement. After two years she complied with the request. She subsequently gave up the other child also. Afterwards he required her to change her name, and return some of his letters, which she was obliged to comply with ; she was subsequently thrown into prison for a promissory note executed by her by the name of Collet to Mr. O'Hara, which she did by advice of Counsellor Knowles, who said her indigence required relief, and that, if Mr. O'Hara took advantage of the note and signature, he would only expose himself. Remained six or eight months in Newgate. Mr. O'Hara was anxious to relieve her, but she chose to remain to have the case tried. At length he brought her discharge and paid all the expenses. This was in 1801, and she was liberated. Was afterwards imprisoned in the Mar-

shalsea, on another such note, by Mr. O'Hara himself, who again liberated her in a similar manner. Was arrested a third time for rent; and again by government as an alien enemy, at the instance of Mr. O'Hara, as Dr. Lawrence informed her, but did not speak to Mr. O'Hara about that. Dr. Lawrence then interfered; inquiries were made, and she obtained a discharge and a protection from government, which protection she now produced and swore to. It came from the Duke of Portland, and is signed T. Lees, and was produced and read on the former trial. Returned to Crebilly in 1818; never was arrested again; got the protection in 1805; remained in London from that year, till 1818; lived again with Mr. O'Hara as man and wife, from 1818 until he married the last woman in 1821; heard of that marriage only two days before she left Crebilly; Mr. O'Hara wanted her to leave it sooner, but she would not. Was put into a chaise to go to Belfast, but at cross roads directed the driver to go to Ballymena, and got notices put up at various public places, a copy of which was put in, and read and proved. It forbade the proposed marriage of Mr. O'Hara and his newly intended wife. Witness applied in London to Lord Chief Justice Ellenborough, who gave her papers to Mr. Barlow, who gave them to Mr. Templar, Master of the Crown office, who sent an order, which was here put in, proved and read. One of the servants who was at Crebilly (Sophia Stafford), when witness first went there, is grandmother to the present defendant O'Hara.

The lady was then cross-examined by Mr. Pennefather at great length, but nothing very particular was elicited from her. She admitted that Miss Jackson and Mr. O'Hara lived in or near London from 1790 to 1802, when that lady died; that she (witness) was there also, and knew of their residence, but never went to claim or demand her husband, nor wrote to Miss Jackson for him.

By the jury—Old Mr. Hamilton acknowledged witness as his daughter in London, and he was alive at the marriage of Mr. O'Hara with Miss Jackson. She dined with Mr. and Mrs. Hamilton there. Witness did not apply to old Mr. Hamilton to interfere for the restoration of her husband, because he himself had left his own wife, and had taken up with another, and was at that time in London to avoid an arrest.

Rev. Patrick Brenan.—Is a Roman Catholic priest; lives near Ballycastle; was educated at one of the Colleges in Paris; was five years there in 1789; saw Mr. O'Hara in Paris, and dined with him there. There was also a priest (Cassidy) and a French officer. The French lady



was introduced by Mr. O'Hara as his wife ; she sat at the head of the table ; the child was in the room in the nurse's arms.

Ellen Dowdal's deposition was read from the Judge's notes of the former trial, she having died in the interval. It stated that she had been four or five years in Mr. O'Hara's service ; saw the French lady there ; she got the name of " Mademoiselle," but principally that of Mrs O'Hara, in the house. Witness was present at the marriage by the priest. Miss Cherry O'Neill, and Mrs. and Miss O'Kane, visited Mrs. O'Hara ; was present when the child was christened.

Mungo Brown, is an advocate at the Scotch bar, and a Presbyterian ; it is never known in Scotland that marriage is celebrated in church ; such a marriage as that which is said to have taken place at Dumfries would be legal.

Alexander Wilson.—Has been a tenant on the O'Hara estate forty-five years ; produced a lease dated 1789 ; it is for the life of Mr. O'Hara's " son, John Francis Hamilton."

D. O'Hara was a tenant of Mr. O'Hara ; recollects when the plaintiff was born ; there were bonfires on the fair hill, and drink was given to the tenants.

Daniel Murray.—Knew the late Mr. O'Hara ; knew one Lindsey ; had some conversation about Lindsey ; Mr. O'Hara said he was taking great liberties in speaking of the French lady ; witness observed that others were speaking also of her. Mr. O'Hara said, as you are a gentleman, and a person to be relied upon, I tell you, we really are married, though I do not wish my father to know of it.

Patrick O'Hara.—Lived at Crebilly ; saw the bonfires and got part of the whisky ; Mr. O'Hara, on that occasion, gave out the toast of the heir of Crebilly.

A letter from Dr. Lawrence was then put in ; it was addressed to Mrs. O'Hara, 33, Bury-street, purporting that Dr. Lawrence was sorry he could not call, but enclosed £10, and would write to Ireland as he proposed.

Mr. Pennefather (afterwards a judge in Ireland), for the defendant, proposed to prove that the professed Scotch marriage could not have taken place in 1787, for there was no person of the name of Gibson at the King's Arms Inn till the year 1798, and that Madame Collet was discharged from the Hon. Miss Preston's service for impropriety of conduct.



The first witness called was Thomas Glendinning.—Lived in Dumfries ; he had been there since 1786 ; knew the King's Arms ; was born within four miles of Dumfries ; the King's Arms in 1786 was kept by Henry Clint, who kept the house till 1798. There was also in Dumfries the George Inn, kept by M'Vitty. There was no inn at that time kept by any person of the name of Gibson in Dumfries ; Gibson came there to the King's Arms in 1798 ; was proprietor of the King's Arms. Witness had the lease in his hand that was granted to Gibson ; it is dated 1797 ; held it four or five years.

Joseph Wharton.—Is an Englishman ; lived at Shap, in Westmorland ; removed to Dumfries in 1798 ; witness married a sister of Mrs. Gibson ; Gibson kept an inn at Shap ; lived three years with Gibson as coachman ; removed with him to Scotland.

William Dalzell.—Lived in Dumfries ; had known the King's Arms for forty years ; lived at the inn in 1783 ; and left it in 1798 ; Thomas Clint was landlord in 1783, and until 1798 ; witness went as post-boy to the King's Arms Inn ; there were three head waiters in witness's time ; the first was William Haslop, the second Smith, and the third Stevenson ; Smith was waiter in 1787 : there was no person of the name of Gibson as landlord or waiter in 1786 or 1787.

Cross-examined.—Recollected an English or Irish gentleman and a French lady, travelling with a black servant, and stopping at the inn thirty-seven or thirty-eight years ago ; did not see any other servant with them ; did not recollect how long they stayed at the house ; saw the French lady going up stairs ; Clint was at the time landlord, and Smith head waiter ; no servant about the house of the name of Gibson ; the black servant alluded to was a woman servant.

Thomas Landon produced an attested copy of a bill from the Court of Chancery, in the cause of " O'Hara v. O'Hara," and the answer in the same cause ; also various orders from the Court of Chancery, and a copy of the judgment in the Court of King's Bench ; and orders to examine the Hon. J. Preston of Liege, in Flanders, dated 18th July, 1825.

The deposition of the Hon. John Preston was then read by the Register. Was seventy-two. Did not know any of the parties in the suit. He was brother to the late Lord Gormanstown. His sister Margaret, being at Lisle, on the 31st of October, 1786, hired a French or Flemish woman as *femme-de-chambre* or waiting woman, called Rosalie ; did not know her

surname ; did not know what wages she was to receive, but thought it was about six or eight louis a year. The witness did not know in what situation Rosalie was previous to her engagement with his sister. Witness went to Dublin in 1786, on being appointed guardian to his nephew. Travelled in a carriage with his sister ; Rosalie was not in the carriage with his sister ; she and a man servant were in another carriage. Rosalie did not leave her service voluntarily, but was turned off ; his sister had no other maid-servant in 1786 or 1787 ; Rosalie never lived in the capacity of companion, nor as a friend or intimate ; she was not, when hired, in a rank or situation to entitle her to keep company with his sister.

Abraham Brewster, Esq., barrister.—Attended last trial, and was in court, in Dublin, at the time, and took notes ; recollected Mrs. O'Hara's answer to the question as to her education ; she says she had been to school at a convent, and received an education suitable to a gentlewoman, and came over merely as a friend and companion to Miss Preston, and that her rank and situation was such in France as to entitle her to keep company with Miss Preston ; she deposed that she practised lace-making partly for profit, and partly for amusement. On the question from the jury, she admitted that familiarity is greater in France between servants and masters, than in this country.

The Bishop of Meath.—Knew the late Mr. O'Hara intimately ; Miss Jackson was witness's wife's sister, and niece and ward of Lord O'Neill. Shane's Castle is eight miles from Crebilly, and Tullamore lodge is about a mile and a quarter from Crebilly ; was present when the license was obtained, and the usual oath was taken, swearing that there was no pre-contract or impediment to this marriage ; they were married at Kildross, and afterwards went to Portglenone ; they then resided at Jackson's-hall, near Coleraine, afterwards at Crebilly and in Dublin ; they went to England about three years after ; saw them there ; had some conversation with O'Hara, after his wife's death, about his children. He introduced the children to him, and told witness they were illegitimate ; witness, on that occasion, advised him to apprentice them out.

J. Patrick, surgeon, in Ballymena.—Became acquainted with Mr. O'Hara in 1817, and was present in the church of Ballymena, when he was married by Mr. Babington, to Miss Sophia Duffin ; in June, 1819 ; Miss Duffin was daughter of Samuel Duffin, a farmer ; the church was full at the time of the ceremony.

**Cross-examined.**—Saw the caution against the marriage put up by the former wife.

Three letters from the plaintiff, signed John Francis Hamilton, to his father, were then proved and read. They related to insignificant subjects, and concluded with the phrase, “your humble servant.”

**Henry Murray.**—Was witness to the lease granted to John Francis Hamilton, of seventy-seven acres, for three lives, at the rent of thirty pounds.

**Robert Knox.**—Knew Mr. O'Hara; was intimate with him, dined frequently with him, and sometimes stayed at Crebilly for four or five days at a time in 1787, 1788, and 1789; met a foreign lady there; she was called “Mademoiselle” by Mr. O'Hara, and by witness and servants; witness met many persons as visitors, but never any ladies.

**James Gray.**—Was Surveyor of Customs at Portpatrick; knows John Johnson; he lives at Ballyhalbert; had opportunity for a number of years to know his character, especially since 1815; did not consider him worthy of credit on his oath.

**John Lockhart.**—Knew John Johnson since 1815, at Portpatrick; knew him as a smuggler and informer, and would have great difficulty in believing him, unless he stated a very probable story.

**Sarah Knowland** (her deposition taken by commission).—Was wife of the Rev. Mr. Knowland; was sixty-three years of age, or thereabout; was acquainted with Mr. O'Hara, her relation, and intimate with him; but never saw him after his wife's decease; in the course of the summer of 1777, witness took an excursion, and wrote that she would visit him, according to his frequent invitation, but at the time did not know that he had any other person residing in the house, either male or female. Deponent waited at an inn on the road, and received a letter from Mr. O'Hara, expressive of regret at not receiving her at Crebilly, as a person or female resided at his house with whom it was impossible she could associate.

A copy of the will of the late Mr. O'Hara was then read, dated the 29th of March, 1803, in which, after two or three legacies, he devises his personal property to his “natural sons,” Claude Collet and John Collet.

This closed the case for the defendant.

Mr. O'Connell, replied, in a speech of upwards of three hours' length.

The jury, after partaking of refreshment, were locked in, and in less than an hour returned with a verdict for the defendant.

## A MARRIAGE IN SCOTLAND.

**THE** Sir Richard Bemptde Johnston Honyman, Bart., of this singular and interesting case, so remarkably similar to the one just related, and so peculiarly illustrative of the present marriage-law in Scotland, was the scion and representative of an ancient and honourable Scottish family, which was raised to the baronetcy in the person of William Honyman, an eminent lawyer, and Lord of Session by the title of Lord Annandale. He was created a baronet the 11th May, 1804, and dying in 1825, was succeeded by his eldest son, Sir Richard, the second baronet, whose marriage is here the subject of an investigation, which began in the Scottish courts in 1825, and ended in the House of Lords in 1831. The following report is taken from Halkerston's very able and interesting digest of the marriage-law of Scotland. The facts and procedure are these :—

In the summer of 1808, the pursuer, Dame Elizabeth Campbell, then an accomplished young woman of twenty-two years of age, went as governess to the family of Sir William Honyman, father of the defender, Sir Richard Bemptde Johnston Honyman, and for six years remained in charge of Sir William's daughters, respected and esteemed in the family. At the end of three years, the defender returned to his father's house from India, at the age of twenty-four. His health had been somewhat affected by the climate, and therefore, he was not only more at home and in the company of the pursuer, but necessarily became an object of deeper interest, and of all those little attentions which it is a sort of privilege of indisposition always to command. He came to his father's house at Smylum, near Lanark, in September, 1811 ; and although it was proved by the evidence of the coachman, a domestic of the family, that not the least impropriety was observable, it was evident that a very mutual

attachment commenced, which continued to increase, till it terminated in a marriage, which took place nearly two years thereafter, viz., in June, 1813.

In spring, 1812, the pursuer's health became impaired by a liver complaint. According to advice she took a sea voyage to London in June, 1812, and resided for a fortnight with an uncle, Mr. Chambers, in Milman-street. It so happened that the defender, having gone to Cheltenham for his health, came to London soon after, and, as was to be expected from the state of their affections, he spent a considerable portion of his time in Milman-street. Returning from London, the parties spent the succeeding autumn together at Smylum, when, though distant arrangements were made for completing their plan, they did adopt the resolution of becoming man and wife, as soon as it could with any safety be accomplished.

The defender having been returned to Parliament, as member for Orkney, went to London again about the end of January, 1813; and having applied for permission to correspond with the pursuer by letter, he was but a very short time in London before he took advantage of the permission given to him, and wrote the first letter of the series of correspondence produced in process. This series, which consists of three letters, were all written previous to the cohabitation; and their terms are very important, because, independently of particular expressions which distinctly mark out the relation of husband and wife, as that, and that only, which he contemplated with the pursuer, they are, in their whole strain, expressed in language so free from everything of a gross or criminal nature, that it is impossible for a moment to consider them in any other light than as the letters of an honourable lover.

The letters from the pursuer to the defender have been all destroyed by the defender, in the circumstances to be afterwards explained.

On the defender's return to Smylum in April, 1813, the courtship was continued in the same honourable terms till the end of June, when, after a lapse of nearly two years from the commencement of his attentions, the marriage was contracted by the distinct avowal of the parties *de præsenti* to accept of one another as husband and wife. This was in private, and the publication of the marriage was anxiously avoided, for the reasons already referred to.

During part of the succeeding winter, the pursuer resided with her aunt, Mrs. Fraser, in Edinburgh; and the defender visited her there.

The defender again returned to his duty in Parliament in spring, 1814, and the correspondence was continued while he was in London.

In the summer, 1814, the pursuer was delivered of her first child at Smylum, and she so managed matters as to conceal her confinement from the family ; and if anything could have fixed permanently the affection and esteem of the defender, it might have been supposed that her conduct at this crisis must have done so, for she made the extraordinary exertion of leaving Smylum with her infant within thirty-six hours after her child was born, and coming in a carriage to Edinburgh, and having been put down at the end of the Mound, she walked down with it to Leith, where she obtained shelter for herself and the child in the house of a stranger—and all this to prevent a trace of anything which might expose the defender to his father's displeasure. After having recruited her strength, and placed out her child to nurse, she returned to Smylum, where she remained till the close of the year, when finding that some circumstances had transpired which excited a suspicion amongst some of the servants of the family, she left it, after having resided in it for six years and four months, enjoying, during the whole of that period, the approbation of all its members.

After leaving Smylum, the pursuer paid a visit to a friend—Captain Campbell, the chamberlain to the Duke of Argyle, near Inverary ; and while there, the defender wrote some letters to her anxiously desiring a meeting to arrange their future plans ; but owing to an accident which he met with on the road, he did not accomplish his visit. After her return from Inverary, in 1815, she went to Edinburgh, where she remained with her aunt for some time, and where the parties, though with secrecy, cohabited as man and wife. Previous to leaving Edinburgh the defender paid, as he was bound to do, his wife's debts, being the expense incurred for herself and child during the preceding year.

It was with his approbation that she had, as above mentioned, left Smylum and gone to visit her friend at Inverary, where she remained till spring, 1815. On her return to Edinburgh, and on her informing him of her motions, probably in disappointment that he had not contrived to break through all the bars that stood in his way, in order to have some communication with her, he did, as soon as circumstances permitted, come to Edinburgh, and the intercourse continued as close as possible, without betraying their secrets, till her second pregnancy obliged her, in

order to avoid discovery, to leave her aunt's and go to York, where their second daughter was born in June, 1816.

The pursuer's talents, aided by a few hundred pounds, her private property, enabled her to maintain herself and her children; and as Sir Richard's finances were but very slender, and all communication, through third parties, was attended with danger, she continued for some years to support herself and children by her own industry. It appears, however, that absence and the exertions of the family gradually cooled the defender's affection to her, so that, as he very heartlessly stated in one of his pleadings, she was allowed by him "to wander unfriended and alone, and to seek shelter wherever she could find it." She had friends, however, who had made her some advances of money, and she returned to her aunt in Edinburgh, in 1820, with whom she lived till that relative's death in January, 1821. During that year (1821) her health and strength failed, and seeing no prospect of being able to reimburse her friends, she applied to the defender by letter, mentioning the circumstances of her bad health; and he himself admitted, that this communication was the means of renewing their intercourse from 1821 to 1823. The letter he thus received, and which he does not allege to have contained any expression of passion, but only a communication of illness, was, with all her other letters, destroyed by him in 1824. A year after he abandoned her altogether.

The pursuer was thrown into jail for debts necessarily incurred. There, though forlorn and penniless, she supported her fortitude, and the secret of her marriage; knowing that if she had made such discovery it might have brought her creditors upon the defender, as her husband, and terminated in the destruction of all her subsequent hopes of reunion or happiness with him. Here she wrote the most affectionate letters, telling him that she was dying and the children starving, and entreating him to have pity on his own. The defender had, after he had left her in 1823, endeavoured to obtain a discharge of her claims upon him as his wife, but this she steadily resisted. With true dignity, amidst all her calamities, she referred her case to his conscience, and conceived that all she wanted could not fail to be obtained by painting in true colours the destitute state in which he had left his children.

The pursuer, finding that in 1824 the defender was determined to desert her altogether, and to deny the marriage, she, at last, on the 6th

May, 1825, instituted an action, concluding for a declarator of marriage, and the legitimacy of her children.

The summons narrates, that the pursuer resided at Smylum, as governess of the family of the defender's father, for six years and four months ; that while there the defender professed the greatest love and affection for her ; and when, on account of bad health, she had gone to reside with her uncle in London, the defender went to London, and visited her at her uncle's, twice a day ; that on her return to Smylum, he returned there also, and continued his attentions and professions of love and esteem : and on his being elected member to serve in Parliament for Orkney, about a year and a half after their first acquaintance, that he, after courting her for marriage, asked and obtained permission to write to her, and a promise that she would answer his letters, and that a correspondence evincing the strongest love and esteem, was carried on till his return to Scotland, about the month of April, 1813. That from April till June, 1813, he persevered in his courtship, and in consequence of these addresses, and professions of love and esteem, continued for nearly two years, he gained the pursuer's affections, and notwithstanding her hesitation for some time, on account of her reluctance to a clandestine marriage, which, owing to the circumstances in which she was placed with his family, his marriage with her behoved to be, that she at last, on the 25th June, 1813, consented to become his wife, and they afterwards lived and cohabited together as man and wife, and two children were born of the marriage. The summons then states, that a correspondence between the parties proceeded on the assumption that marriage had been promised or contracted between them ; and one letter is quoted, in which the defender calls the pursuer his " beloved wife." And from this narrative it concludes, that " from said letter, with other letters and documents which will be produced, and from facts and circumstances to be proved, it will be made appear that the pursuer and the said Richard Bemptde Johnston Honyman, now Sir Richard Bemptde Honyman, Bart., are married persons, husband and wife of each other, and that the pursuers, Elizabeth Honyman and Alexander Honyman, are their lawful children."

After various steps of procedure, unnecessary to be mentioned, except that a curator was named for the children, and a proof led, the Commissaries pronounced the following judgment :—" July 11th, 1828, The Commissaries having considered the memorials for the parties, writings produced, proof adduced, and whole process, find facts, circumstances, and



qualifications proved, relevant to infer marriage between the defender and the pursuer : find them married persons, husband and wife, accordingly : therefore, decern in terms of the libel, in so far as concerns the conclusions for declarator of marriage, adherence, and legitimacy : find the defender liable in expense of process, of which allow an account thereof to be given, and when lodged, remit the same to the auditor to be taxed."

Against this judgment, which was pronounced by a majority of the Commissaries, a bill of advocation was presented to the Court of Session, and being advised with answers, the Lord Ordinary made avizandum with the cause to the Lords of the Second Division.

The Court of Session, after perusing the pleadings, and hearing counsel *hinc inde*, allowed the pursuers to state in a minute, whatever farther evidence they had to produce ; and this being done, and the minute followed by answers, the Court pronounced as follows :—" The Lords," 7th July, 1829, " having considered the bills and answers, together with the minute and answers, and whole productions, and heard counsel for the parties : In respect of the statements contained in the minute and answers, and of the additional evidence produced and offered by the parties ; remit the cause to the Commissaries, with instructions to recal their interlocutor of the 11th July last, and to reconsider the cause, with the additional statements and evidence contained in the pleading and in the productions made in this Court, with powers to them to allow such further proof or pleadings as to them may seem just, and to consider and decide on any application of the pursuer for an interim allowance, and to do otherwise as to them shall seem meet."

The case having been thus returned to the Commissaries, and after leading additional proof, they, after various steps of procedure, pronounced their final judgment in these terms :—" February 26, 1830. The Commissaries having considered the additional proof adduced, and resumed the consideration of the whole cause, of new, find facts, circumstances, and qualifications proved, relevant to infer marriage between the pursuer and defender : Find them married persons, husband and wife, accordingly : therefore, decern in terms of the libel, in so far as concerns the conclusions for declarator of marriage, adherence, and legitimacy ; and in the event of the defender not adhering to the pursuer, find her entitled to an aliment out of his estate, but before modifying the same, ordain the pursuer within three weeks from this date, to give in a conde-

scendence of the defender's circumstances, and when lodged, allow the defender to see the same, and lodge answers thereto, within three weeks thereafter: find the defender liable in expenses of process, of which allow an account to be given in, and when lodged, remit the same to the auditor to be taxed."

The defender being still dissatisfied with the Commissaries' second final judgment, thought proper to prefer another bill of advocacy to the Court of Session (Second Division) who, after hearing counsel for the parties, on 9th July, 1830, pronounced as follows:—"The Lords having considered this bill, answers, and productions, and heard counsel for the parties, refuse the bill, find the advocator liable in expenses to this Court, and remit to the Lord Ordinary to modify and decern for the same."

Against these judgments of the Commissaries and the Court of Session the defender appealed to the House of Peers, who affirmed them.

On that occasion, the enlightened speech of the learned Lord Chancellor Brougham, at pronouncing judgment, was as follows:—

Lord Chancellor.—My Lords, although this case, which is of great importance to the parties, has been sought to be of equal importance to the law of Scotland, I cannot accede to that, for I do not feel that the decision, which I shall think it my duty to recommend your lordships to give on the merits of the case, will at all either be considered as impeaching or affirming any of the known and established doctrines of the Scotch law; I regard it, on the other hand, as a mere question of fact, and it is only in order to guard myself against its being understood that what I shall recommend to you, and what you may be pleased to adopt upon my humble recommendation, in any way alters those principles which have been long established as the marriage law of Scotland, and which it is of the utmost importance to preserve unchanged, and certain, and unambiguous until it may, if it ever should, please the legislature to alter them. It is in order to prevent those two kinds of misconstruction of the ground on which I have to recommend you to affirm this judgment, that I shall state at greater length than I would otherwise do my opinion on the subject. My Lords, two questions were raised in the Court below, and two questions have accordingly been argued, but at a disproportionate length at the bar. The first is, that the summons does not raise the question in a competent shape, inasmuch as it set forth a marriage *per verba de præsenti*, and inasmuch as that is abandoned in the evidence, and all the reliance is

placed for the respondents, pursuers below, on the promise and subsequent cohabitation—I say, this was argued below, but not so much relied on, though not abandoned by the appellant here. But on looking into the summons, I find no sufficient foundation for this preliminary objection, and that because there is enough set forth according to the style in which summonses are oftentimes drawn, though I must say I have not often seen a more inaccurate, or more loosely drawn summons than this, therefore I am a little surprised that a question should be made about it. According to the style in which I have seen these summonses more than once, certainly most ably discussed—in one of the former cases I recollect at the bar, the whole matter is brought in, and in all the ways in which a party may be married, are set forth without very distinctly specifying which of those several ways it is on which reliance is mainly made.

In the latter part of the summons, indeed, within the four corners of the summons, I find enough to let in evidence of the kind of marriage now relied upon.

Now, my lords, the next question, and the only question remaining to be considered is, whether in the marriage now relied upon you have a promise with a subsequent copula or cohabitation. Now, my lords, I take the law of Scotland to be, whether it is to be continued or not, that so perilous an experiment is to be tried on society, and upon the most impetuous passions of society, as to enable two young persons at the twelve years of the one and fourteen years of the other, who could not, by the law of Scotland, the one for seven years more, and the other for nine years more, competently by the most solemn and deliberate act, affect in any one way a single half-quarter of an acre of their landed property, to do an act which shall unite them for ever in holy matrimony, and create an indissoluble union for life; lead to the birth of issue, and by that carry to the issue, it may be, of a common reprobate (I am not speaking of the parties in question), all the landed estates of which a man can be seised, and all the honours and dignities a man can inherit from his ancestors—whether it be fitting, that it should in any country in common consistency be the law, whether in expediency it is fit that this should be law, and that, in half a moment, while the passions are fermenting, and the reason, if ever it has budded in these young persons at all, is by force of those passions laid asleep, and, careless at that moment, without the slightest interposition of delay,

to give time for reflection, they should be capable of binding themselves for life, by the most solemn of all human contracts, with the largest of all possible municipal and political effects attached to it, both on honours and on property, that should be capable of being valued by the law of civilized society, and whether it be thought fit and proper, I do not stop to inquire; suffice it to say, that it is the law of Scotland, and that it is as certainly the law of Scotland that that is a valid marriage, as that it is certainly the law of Scotland that it is an irregular marriage. It is an act to be visited with the censures of an ecclesiastical nature—it is irregular; but it is a valid marriage, and has all the consequences touching the rights of the parties mutually, and touching the rights of their issue and its legitimacy, which the most solemn marriage upon the publication of the banns by the greatest divine of the Scottish church, established by law, could draw after it and confirm. That is the law, and we are to administer that law, and we are to consider that law in each case with a view to whether the facts bring the parties within its scope. Now, marriage may be, nay, it is a consensual contract, for it is constituted by consent and consent alone. But there are three various ways in which you have evidence of the consent; there are three kinds of consent which may be so called—one is consent in fact, the other is consent to be presumed by law. One is, that there shall be *verba de præsenti*, a consent mutually given and taken to be man and wife thereafter. The other is, that they shall have obtained repute as husband and wife, acknowledging each other *rebus ipsis et factis*, by living in Scotland as man and wife. That partly by giving rise to presumption of matters of fact, and partly having been made the ground of presumption in law, constitutes a valid marriage in Scotland. The third is, that which touches the facts of the present case more nearly and more immediately, where a promise is given, and a cohabitation follows upon the promise, and is to be taken as not disconnected from that promise. A promise, like all other acts, may be proved by two several ways, either by direct evidence or circumstantial evidence. There may be direct evidence by the testimony of witnesses who heard the promise given—there may be direct evidence in writing proved to be of the hand of the party giving it; but, like all other facts, these things may be proved; the promise may be proved, without either witnesses to support it, or the handwriting to remain of record against the party promising. Circumstances may be proved by evidence, circumstances may be proved by the testimony of

witnesses, or by written evidence, proving those circumstances, and if those circumstances are sufficient to convince the court, trying the fact, as a matter of fact, that a promise did take place, the promise must be taken to have happened as much as if it had been proved by the other more direct and immediate and satisfactory proof, though sometimes (indeed our law very much in its practice proceeds on that assumption) circumstantial evidence is more clear and stronger, and even less liable to doubt than direct evidence, inasmuch as it is more difficult to make out a circumstantial case by curiously contrived perjury, than it is to make out a direct case by one or two witnesses who may easily swallow, as it were, an oath false to the fact.

Now, let us see what the kind of evidence is, it being not of the direct kind, but of the circumstantial kind, by which you here are called upon to admit, as the Court below did, that there was a promise of marriage between the parties. I shall now, my Lords, take the case, sifted as it has been by the observations I have taken leave to throw out, as if I were at *Nisi Prius* trying before a jury, and stating to the jury the grounds on which their verdict must turn. I should then have been called upon to inform them in my direction, that there were three matters for their consideration, before which they could not find a verdict for the affirmation of the issue, supposing the issue to have been joined, what we call in English law pleading, an issue of *ne unque accouple*. I should then call them to attend to three particulars—that they must be satisfied there was a promise, that they must be satisfied there was a serious and intended promise, intended by the person making it, and accepted as such by the person to whom it was made. In the second place, that they must be satisfied that there was a cohabitation afterwards; in the third place, that they must be satisfied that there was no disconnexion between the subsequent cohabitation and the preceding promise at all events, and that is the very way in which I think I am safe in stating it, as I have already stated it, that there is no disconnexion, no *medium impedimentum*, no evidence to rebut connexion, no disconnexion, and if that disconnexion is not substantiated, the law will take the promise to be coupled with the cohabitation.

The cohabitation is here admitted, there is no doubt whatever of its having taken place. The disconnexion cannot be set out, for the time is so short, the circumstances so little varied; that is, the circumstances of the parties between the promise and the cohabitation, if there was a promise, the relations in which the parties stood to one another, and all

mankind besides, are so precisely the same, that I take it to be quite as clear that there is no disconnexion of the cohabitation with the promise, as it is clearly admitted, indeed, that there was a cohabitation. Then the only question turns upon the existence of a promise ; and to that I then come in the last place. If such a doctrine had been founded on here, that a courtship, however warm the expression of an intention to marry, however strongly expressed, and however plainly entertained, constitute in itself what may be termed (borrowing an expression familiarly known to the Scottish lawyers in either case,) *equipollents* to a promise, I deny that proposition in law. But courtship (for the reasons I fling out in the course of the argument)—that promise must be mutual, both parties must be bound, and the marriage, to bind one must bind both ; and there is nothing more plain, that the perpetual distinction between an intention to marry, and a promise to marry, and the law attaches on the promise followed by the cohabitation and not on any intention—but courtship is a most material matter in the case when you are coming to examine, whether from the conduct of the parties a promise has actually passed between them. Where persons are on the footing of lovers, and where it is so well known that love is usually followed by matrimony, and whereas it is naturally incident to the relation of lovers to wish to be married, and where a long course of courtship can only have an intention of marriage in view, though the intention to marry will not of itself supply the want of a promise. Yet when you are seeking for evidence of a promise, at all events it comes so near it as to make it extremely probable that the parties in courtship for a length of time had received mutual promises of marriage, it being the subject matter of marriage, that matrimonial connexion ultimately should take place, the promise being the frequent incident of such an intercourse between the parties. Therefore, if it stood alone, and dryly as a mere question of probability, that would carry the party setting up the marriage on the ground of a promise, a good way towards his journey's end to satisfy the Court and the jury clearly (whom I am supposing to be trying the cause), that there was a courtship and a course of love-making, with a view, as it may generally be taken, to be to matrimony, otherwise it is no courtship between the parties. But now, let us hear whether the evidence rests here, because, if it did, I should have reversed the judgment. I do not quarrel with that judgment when I allude to the evidence, for I find, first of all, the strongest expressions of that kind of attachment, which may be said to spring up, and to be

the object with lovers who can have nothing but a permanent, that is, a matrimonial connexion in view. "Love me as I love you, and put my heart at rest, by assuring me of it," and this expression, "Farewell, thou in whom all my joys are centred, my lovely Betsy, adieu. I trust you will never be able to accuse me of having a bad heart. Believe me, I would not intentionally hurt any one, far less that being for whose happiness I would lay down my existence," with other expressions I don't single out. I have singled out a few of them, some of the ranting expressions with which love-letters frequently abound, of which a good deal has been said, and justly said. Then was this expression of attachment reciprocal? Was this tenderness of the heart, and this offer of the heart in love, with a view to a matrimonial connexion, though not promised?—I am not talking about promise, but courtship—was this accepted by the lady? An answer to that first letter must have come, though the appellant does not produce it, however he may have accounted for its loss more or less satisfactorily. I rely not on that; he says, "I received your most welcome letter this morning, my dearest, dearest Eliza." Why was it most welcome? Could it be for any other reason than that she gave her reciprocal affection, and that she gave the offer of her love in return for his.

Then he says, "Well does it deserve an immediate acknowledgment"—for what? because it returned his affection. "Never can I sufficiently thank you for the alacrity which you have displayed." Here is a second step towards the journey's end—there is a love—the tender of the heart—a courtship to affirm a connexion, and that is proof, if any were wanted, under the third head of these observations which I am making. The second step is the acceptance by the lady of the heart, or the love of his person. Now come we to the more material parts, for they leave no doubt in my mind of a promise having existed between the parties. "You will receive this on Monday, and write me soon—God bless you, thou dearest girl, again farewell; and believe me, with an attachment strong as it is pure, yours, most affectionately." This is pure virtuous love,—this is courtship with a view to virtue,—this is courtship with a view to matrimony. And, my lords, suffer me to add, that we are to consider not merely what may have been, and to speculate on what may have been the intentions with which he wrote, but "We are," says Sir William Scott, the present Lord Stowell, in that admirable judgment on what he calls the Canon Law of Scotland, delivered by him in Dalrymple



*v. Dalrymple*, “ We are first to consider what the lover meant by these words, and then we are to consider how those words were likely to be received by the party to whom they were addressed ; for can anything be more monstrous, more unjust, and inconsistent with all principle, than to say a man shall use certain expressions, and turn round and say, I meant not so, though the party to whom they were used could have affixed but one meaning ?” Following that remark up, how does it proceed ? “ Nothing, I trust, will thwart the happiness I look up to.” Now I beg your lordships to attend to this, a promise differs from a contract *per verba de præsenti* ; in this, that it contemplates a future period ; what I have read I mainly rely on, because it proves it was a contemplation of an after event. Intentions, however ardent, however strongly expressed—courtship, however direct, asking, however plain and prompt, asking the hand in marriage, they all refer to the present, but that which differs a promise from this thing is, that it has a future reference, it contemplates a future time, and that is material. Now your lordships will observe these all sound *in future*. Nothing, I trust, will thwart “ the happiness I possess ? I enjoy ? I prize ?”—words of present meaning ; no such thing : “ the happiness I look forward to ”—that is future—“ nothing shall—nothing can—for it is felicity sanctioned by virtue herself, and everything that is tender and amiable.” Can any man read these words, and not affix this plain meaning to them, that she was to look forward, and he told her that he looked forward to nothing else but marrying her, and that virtue itself would sanction that pure affection and those pure enjoyments only in the state of matrimony which he really plainly contemplates. If the lady construed, according to Sir William Scott’s judgment in *Dalrymple v. Dalrymple*, if she considered this as a direct promise (I should not much wonder if she did), but though I don’t take it now as a direct promise in itself, yet it is the strongest evidence, that they were on the footing of a party promising, and a party to whom it was made at this period before the cohabitation had taken place. I don’t accede to what Lord Glenlee lays down in a doubtful sort of judgment, that if the first part of this passage stood alone it would have gone far, but he rejects it entirely ; for what follows, “ Every thing that is tender and amiable,” he says ; that is nonsense, and is a violent trashy expression. With great submission to that learned and excellent judge, excellent as he is known to be, I don’t think that is so accurate and philosophical a view of the subject as his Lordship is wont to take in other



inquiries. I do not think adding tender and amiable to the expression of felicity sanctioned by virtue herself, will enable me to get rid of the plain and manifest tender of the expression. "In offering you, my best beloved, that heart which has for a long time been devoted to you," this is in the same letter in which he thanks her for accepting his love, "I have only to lament that it is not a more deserving gift to her to whom it is offered—we will talk over the future when we meet." Could a man think this meant anything but future marriage? What were they to talk over? Cohabitation? No. They were to talk of their pure affection, sanctioned by virtue herself; the future was the matrimonial future, and clearly could have meant nothing else. Then we have again, "You deprive me, thou who art the most dear of thy endearing sex, of a very great pleasure, by prohibiting my delivering you letters to our uncle;" then comes, "you must no longer have embraces for any one else, not even for aunt Fraser or sister Ann—I call them so, for your aunt is my aunt, and your sister my sister." Now, added to all that, I import from the subsequent letters into this consideration of the case, the joy and the interest he takes, when she appears to be *enceinte*, when he was looking forward to the birth of an infant, "I must be with you to comfort and soothe you, and to partake of the joy such an event will excite;" and he is anticipating the happiness in another letter of seeing all the schemes he had formed realized. Now this is the expression of a person who looked forward to a matrimonial joy, and these expressions as to the birth of a child must mean that he looked forward to that being his legitimate child—and not his bastard child. Looking at all these letters, taking them altogether, I can read them in no other way than as letters passing from one man to one woman who had plainly been in courtship with a good view, and who had promised each other in marriage, which there was an obvious and satisfactory reason for deferring until a future period—I mean till the death of his father, who was then an old man near his latter end, and who, very possibly, might view this as an unseemly, if not an inferior or degrading connexion.

My Lords, I beg to say, that I should differ with him, if he so regarded it. I desire to be understood, as saying that this lady's conduct stands as pure and unimpeached as that of any party who ever came to this bar. I desire to have it understood, as in part of my opinion, that my Lord Armadale's son, or Sir William Honyman's son, even if he had been a wealthy, instead of a poor baronet, of small and moderate circumstances,

would not have been at all degraded by forming a virtuous connexion in marriage with a lady who had been governess to his sisters, of whose accomplishments I have his own admission, whose charms he is the first to speak forth, and whose virtue, whose purity of character is entirely unimpeached by all the evidence and all the scrutiny to which it has been subjected.

“But, my lords, now, if there was any doubt, or ambiguity as to the meaning of the previous expressions, the cohabitation which follows will carry us far out of the scope of that doubt. For I desire to be distinctly understood, as according to the doctrine, that where persons are in courtship, though courtship is not a promise where persons are in courtship, and where ambiguous expressions may have been used, and where an offer of love may have been made on the one hand and accepted on the other, that what is doubtful will become certain, and that, if there is great probability of a promise having taken place, that probability may be turned into a certainty by the cohabitation which follows.

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“These are the grounds, my lords, and the reasons, which I have gone at more length than I should otherwise have deemed it necessary to do, in moving the affirmance of the judgment. I take leave to submit, that there is sufficient evidence to establish marriage in this case. I have laid purposely out of view the letter where the word *wife* has been mentioned, and I have laid it out of my view because there is nothing on the face of the instrument, which has been given to explain the erasure, that is favourable to the party, to whose custody it came from the party in whose power it had been. I, therefore, rest my judgment, and the other part of my opinion, which is to advise your lordships to affirm this judgment—I rest my opinion on the other facts of the case, which are sufficient, notwithstanding the two circumstances which I think were unfavourable, and which I think cast a shadow of doubt over the case at different parts of the argument. I mean, in the first place, the letter of 14th July, and the non-production of the evidence referred to in that letter, as to which much was said by Mr. M’Neill, and which leaves in my mind some doubt, whether this unhappy woman, reduced to the greatest difficulties, burdened with children, whom the appellant seems to have had no very great inclination to support, and denied the rights of a wife, to which she deemed herself entitled—probably did, under the bad advice of some female friend, put forth a stronger case, by way of

intimidation, than she really had. This is a notion, I will not say, I can altogether be surprised at, notwithstanding I will dismiss that from my judgment, if I see evidence, independent of that part of the case, to satisfy me that she had a case. I have not lived so long in courts of justice as not to have observed that a good case is often marred by trying to make it better by the contrivance of parties.

“ The other point I wish to advert to, which cast the case into a shade of doubt is, that a good deal of correspondence has taken place, in which letters have passed from her to him asking for money in the most touching and painful manner, and alluding to the children, and the connexion that had passed between them, and the footing on which they ought to stand. These must have been present to her mind, yet no claim for the rights of a wife is put forth in that part of the correspondence. I look upon that as another unfortunate circumstance in her case, even more unfortunate than the former, and tending to raise more doubt than the former. If she may have been ignorant of the law and ignorant of her rights, as she says in her letter, her ignorance of her legal rights does not impeach them, nor impede her in the course she takes to have them decided. My lords, these are the grounds on which I rest my opinion, and upon which I call upon the house to affirm the judgment, though, for the reasons I have last mentioned, I shall not ask you to affirm it with costs.

“ My lords, I think it my duty to mention that I have said thus much with respect to the lady's character, for her vindication, and for the sake of the appellant as much as for the respondent. She is now his lawful wife, she is as much his wife by the law of Scotland as if that marriage had never been disputed, and everything that sets up her character, takes off anything that in the heat of argument, at one time (not here but elsewhere), may have been attempted to be cast on her. I felt anxious that that should be removed, which, as far as my judgment can remove it, I have endeavoured to do. I will say for him (and in saying so I say it for her who is now his wife as much as if she had been publicly and openly married to him, and there had never been any dispute about the validity of the contract), I will say, that though he may have acted harshly, though he may have acted lightly towards her, he may have been overpersuaded by the foolish pride of those with whom he is connected by birth, to refuse to acknowledge this lady as his wife; yet he was a very young man, and he may have been irritated perhaps by some sinister influence, perhaps irritated by bad health, and therefore I will look upon

his conduct with as much tenderness as it is possible to regard it. Under all these circumstances, I trust, therefore, that he and his wife will be allowed to go from this bar without any injurious aspersion remaining on their characters in consequence of anything that has taken place here."

Mr. M'Neill.—"My lord, as by the judgment of this house, this lady is distinctly constituted the wife of the appellant, therefore, as the appellant is liable for such expenses as she may have incurred in the course of this suit, which she has now sustained, perhaps it will not be necessary to make any order on the subject of costs."

The Lord Chancellor.—"I have said nothing about costs. She is his wife, and she is not liable to costs. You know he is liable for all her debts by law from the date of the cohabitation."

In conclusion, it is here deemed necessary to quote the following letters which were written by the defender to the pursuer, importing love, courtship, and subsequent cohabitation.

"30, Duke-street, St. James's.

"You will probably have conceived, by the time which I have suffered to elapse since the permission which you so kindly granted me, that I did not intend availing myself of it; but so bewildered and agonized have I been since our separation, that I have been unable to give utterance to my feelings, or form one rational sentiment, even to her who is the tenderest object of my regards. O my dearest, darling Eliza, much as I thought I loved you when we were together, still does it fall far short of that affection I now feel, and so fondly cherish towards you. If the sentiments which I so ardently feel, and have so repeatedly avowed, be reciprocal, hesitate not to say so. I am unable to doubt, after the innocent endearments with which you have favoured me, that it should be otherwise; yet still, as a solace to my woes, refuse not this solicitation. Write me. Tell me that I am dear to you, thou lovely girl. Would that we were once again together, and nothing shall separate us. I look forward with rapture to our again meeting, and then we must form plans for putting our feelings out of the reach of hate. I intend being with you much sooner than I intended. From the embarrassed state of my father's affairs, my residence in London is both improper and disagreeable; and it was only to please him that I ever went. God knows how bad a poli-

tician I shall make ; and I would resign such a situation with great happiness. I went yesterday and paid a visit to the outside of No. 8, Milman-street. The blinds were up and the windows open. Ah ! thought I, they have a different inmate in the house now to what they had when I knew it, and the conclusion sunk deeply on my heart. Believe me, I feel a fondness for the house, for it was once the abode of Eliza. I took a most accurate survey of it. The windows were new painted, and there was the little Chambers, who took such an insurmountable antipathy to my looking out at one of them. Farewell for the present, my dearest Betsy, thou best beloved. Love me as I love you, and put my heart at rest by assuring me of it. You will receive this on Monday, and write me soon. God bless you, thou dearest girl. Again farewell, and believe me, with an attachment strong as it is pure,

“ Yours most affectionately,  
(Signed) “ R. B. J. HONYMAN.”

“ I received your most welcome letter this morning, my ever dearest Eliza. Well does it deserve an immediate acknowledgment. Never can I sufficiently thank you for the alacrity which you have displayed. I rejoice to think, my sweetest love, that you do know how impatient I am. If that be one of my failings in the common occurrences of this sad world, how much it is increased when expecting a letter from you. I may safely say, that the only real enjoyment I have had since leaving you is the perusing of your letters. Many is the kiss I give them, and many is the sigh that escapes when I think at what a distance the dear writer is at. Soon, however, I trust we shall meet, and one soft embrace will repay me an age of anxiety and distress. Oh, my darling Eliza, my dearest beloved, my sweetest and my only love, with what anxiety do I look forward to again beholding you, with what rapture do I anticipate the realizing of those visions which my fancy has already formed. Nothing, I trust, will thwart the happiness I look forward to—nothing shall, nothing can ; for it's felicity, sanctioned by virtue herself, and everything that is tender and amiable. In offering you, my best beloved, that heart which has for a long while been devoted to you, I have only to lament that it is not a more deserving gift to her to whom it is offered. We will talk over the future when we meet. Would there was a Milman-street in Edinburgh ; opportunities cannot, however, be wanting, and we must make the most of them. I delivered your dear letter

this day. Send all your letters to me, and they shall be delivered. Never am I so happy as when engaged in your service. Anxiously do I look forward to Wednesday. Never, thou dearest girl, disappoint me in hearing from you. Tell me the day you mean to write, that I may have something to look forward to. Believe me, I am deserving of all your sympathy, and all your love; for I am, without you, a wretched mortal. Farewell, thou in whom all my joys are centred; my lovely Betsy, adieu. Believe me ever yours most faithfully attached,

(Signed) "R. B. J. HONYMAN.

"P.S. Pray, my love, direct your next cover to your aunt's. I am apprehensive of Queen-street."

"My dearest, dearest Eliza,—If I were not the very worst correspondent in the whole world, I should have wrote at least half-a-dozen of letters before now, in return for the affectionate ones I have received from you. I ask but a continuance of such goodness for one fortnight longer, and by that time I hope to be indebted for favours of a still more tender sort than even those of your dear letters. How much, my sweetest love, am I now your debtor, and how happy am I to acknowledge it. My dearest Eliza, my darling friend, you who are everything to me, in whom my whole happiness is centered, and whom, whilst I exist, I shall never cease to love. Even death itself shall not subdue the fervour of my attachment. If it be permitted the mortal part of us to retain the recollection of those who, on earth, were most dear, I'll love thee then, even when my love can no more avail. You deprive me, thou who art the most dear of thy endearing sex, of a very great pleasure, by prohibiting my delivering your letters to our uncle. Be it so. I obey as you desire. You cannot, however, insist on my not visiting the street, without being very arbitrary. No such prohibition having yet arrived, I shall continue as heretofore, to visit it once in the day at least. As to your letters, thou dearest of women, I can never burn them. If you are afraid to trust—but no, you are too generous; you judge people too much by your lovely self, to suppose any improper use should be made of them. I cannot destroy, but may be bereaved of everything I value in existence, or existence itself, if I ever under even every or any circumstance, betray a sentiment or syllable of such affectionate effusions. Indeed you may trust me, my love; but it shall only be until we meet, for I will deliver all

your letters into your possession. Farewell, my only love ; God bless you, my sweetest Eliza.

“ Yours ever,

(Signed)

“ R. J. HONYMAN.”

“ My darling Betsy,—I have received your letter very safely, and request you will give yourself no uneasiness about it. Careless as I confess myself to be about many things, I never had, and, moreover, most solemnly swear to you, my dearest love, that I never will have cause to upbraid myself with inattention to anything relating to your dear self. The assurances which you have given ought to satisfy me, but I long to hear them while locked in your arms, and pressed to that heart of hearts, the only one that mine will ever throb at approaching. You have every thing, my best beloved, for securing my affections ; and the result will prove the truth of my assertion. You are everything in the world to me. Without, I am bereft of everything ; and possessing you, I have nothing more to ask. Trust me, love, I know my own heart ; and believe me, my beloved, these are its sentiments. I am writing in the midst of interruptions, and time presses. I rejoice you are to be with us on Wednesday next. The carriage will be in on Monday with William, and you can come out in it. How I long for you, my dearest love ; how I long for Wednesday, and all its joys and pleasures. What a scrawl, Betsy ; how unconnected the sentences ; in short, what a production. It is a letter that requires a partial eye like yours to peruse. I have time for no revisions, but I trust there is need of none. The language of the heart, in however uncouth a form, should be the most acceptable. Farewell, thou joy of my life ; dearest, dearest, dearest being, darling Betsy,

“ Your ever affectionate, and unalterably attached,

(Signed)

“ R. J. HONYMAN.

“ P.S. Let me hear of your health by Jemima. Do not tire, nor write again, as the time of our meeting is nearer than I dared to hope.”

“ My dearest, dearest Eliza,—If you think that I have forgotten you, my best beloved, by having allowed two days to elapse after their departure from Smylum, without writing, you will judge me very wrong. Friday would have been too soon to write, and Saturday morning I went into the country, from whence I have but within this hour returned. Now that I am away from you, I know how much I love you. I have no happiness

except looking forward to being once more with you. God knows when that will be. Not for some weeks, if my father persists in coming to London. If not, I hope very shortly to embrace the darling of my heart. Betsy, love, my fate is fixed—I never can exist without you ; you are the only comfort of my existence. How much do I appreciate the affection of so affectionate a heart ! I will be contented to live in any part of the world with you ; and under all circumstances, it is alike indifferent to me what part of the world, or in what situation, provided you are with me. How are you to write me, dearest ? Tell sweet Jemima to write, and you can put a letter inside. I only ask you to say, that you are satisfied with me. I repose with implicit confidence on the fidelity of your heart. Tell me, my Betsy, if you think there is any likelihood of the 'event, which you and I talked about, taking place. If so, you must come directly. I must be with you to comfort and soothe you, and to partake of the joy such an event will excite. You can easily manage to leave Smylum by assigning the excuse which you mentioned to me. How is your health, *O my beloved wife !* Take care of it, and pray do not, as you are too apt to trifle with that which so ultimately constitutes your own happiness and mine.      •      •      •      •      •      •      •

I dread a discovery of this epistle. Write me the family movements, and inform me when they return. Oh, how much I long to be with you ! It is the only thing that I have to look forward to that cheers my forlorn heart. Farewell, every blessing be with you, my ever dearest and affectionate [torn]

“ Your ever unalterable, sincerely attached and affectionate

“ R. B. J. H.”

Sir Richard Bemptde Johnstone Honyman died without leaving male issue, the 23d February, 1842, and was succeeded by his next brother, Sir Ord Honyman, the present baronet. Sir Richard's daughter, Elizabeth Campbell Honyman, was married in 1836 to William Gillespie, Esq.



## THE ABDUCTION OF MISS TURNER.

THE unfortunate young lady who was the subject of this extraordinary abduction, was the daughter of William Turner, Esq., of Shrigley Hall, in the county of Cheshire, a gentleman who had made a large fortune in the calico trade at Mill Hill, near Blackburn, which town he afterwards represented in Parliament. His daughter was his only child, and a mere girl at the time of her nefarious taking away. The trial of the Wakefields for the offence excited a degree of interest scarcely ever surpassed. After various delays, caused by the traversing of one, the absconding of another of the defendants, and by a removal by certiorari, the trial at last took place before Sir John Hullock, a Baron of the Exchequer, at the Lancaster Assizes, the 23d March, 1827. The particulars of the melancholy affair are amply related in the following report of the case, which, although long, is too interesting to admit of abridgment.

On the morning of the trial, at twenty minutes to eight o'clock, the doors of the Court House at Lancaster were opened to spectators, and in a few minutes every spot of the Court which could command a view of the proceedings was occupied. The interest each moment increased in intensity; and every eye was turned towards the place where it was expected the defendants would be placed.

After the Court had been occupied till nine o'clock, in some other business, the defendants were severally called. Edward Gibbon Wakefield answered. Mrs. Frances Wakefield was not in attendance, but her husband was; and William Wakefield, who was in the Castle for debt, having been arrested since his arrival in Lancaster, was brought into

Court by a bench order. The defendants in attendance were seated near their counsel.

Mr. Starkie opened the pleadings.

Mr. Sergeant Cross then stated the case to the jury as follows:—My lord, and gentlemen of the jury,—His Majesty having been lately pleased to call my learned friend (the Attorney-General, Sir John Singleton Copley, appointed Master of the Rolls the previous September) to a high judicial situation, the duty has devolved upon me, unfortunately, I fear, to conduct this singular cause. Whatever may be the effect of this change of appointment upon these proceedings, I am bound to congratulate the late Attorney-General upon his elevation, where a larger sphere is allotted for the development of his great talents, for the benefit of the community at large. He is a man of too high a character to owe promotion to subserviency, in furtherance of the interests of any political party—of too much manly independence of mind to bend himself to mere party purposes; and I am, therefore, gratified at the recent promotion which he has so deservedly obtained. Now for the circumstances of the present case. By the statute law of England, to carry away any female, under the age of sixteen years, with or without her consent, and afterwards to marry her, unknown to her legal guardians, is a high misdemeanour, subjecting the man so acting to five years' imprisonment and fines; and the young lady to a forfeiture of her inheritance, so long as her husband lives with her. By another statute it is a capital felony; and if this offence had been committed on English ground, two of these defendants would have been tried, and condemned to an ignominious death, and probably executed upon the walls of this very castle twelve months ago. You are, gentlemen, aware, that though England and Scotland form one government, yet that each country is, for all purposes of municipal law, separate and distinct; so that if, as in this case, the crime be begun in this country, and continued and finished in Scotland, the law, in its original state, will not reach these delinquents. They are not, therefore, brought here this day for trial upon these statutes, but on a charge of conspiracy to violate them; and that particular crime is complete, even though the offence be stripped of its consummation in England. First, they are charged with conspiring together to take away the young lady, without her consent, from the care of her parents and instructress, with intent to procure her marriage to one of the parties; and secondly, they are charged with carrying her away for that purpose. Having thus

generally stated the outline of the charge, I will apprise you of the parties who have this day to prosecute it. Mr. Turner, the father of the young lady, whose treatment is the subject of your inquiry, is a gentleman who has acquired, by commercial pursuits, a very considerable property. He resides on his estate, in Cheshire, where he last year filled the important office of High Sheriff. His daughter is an only child; and she had, at the time of this occurrence, passed her 15th year of age. She has much grown since that period, as most children do during their 16th year, which in general advances them far in maturity. The first of these defendants is a lady, now of the name of Wakefield; and through her the whole contrivance of the abduction appears to have been carried on. She went to Paris last year during the Christmas vacation, from her father's (Doctor Davis's) house, in Macclesfield, and was then known as Miss Davis, and continued to be so till this whole business was developed, and then it appeared she had been previously married to the elder Wakefield. In Paris it was understood she met the two Wakefields, Edward and William. The latter, though an Englishman by birth, was an inhabitant of Paris, which city he made his domicile and residence. The elder of the two brothers (Edward) is a widower, and has children of his own; but William has been married in Paris since this occurrence. In that city they had formed a society, which they were pleased to call the first in Europe. It was a little coterie of ladies and gentlemen that had received this designation. Among them was a lady of the name of Bathurst, who calls herself the step-daughter of the venerable Bishop of Norwich. She, though not to appearance engaged in any of the criminal parts of this enterprise, made herself very busy about it, both before and after its public explosion, and had remarked, in communicating with one of the defendants upon the business, "Little did I think, when I desired Miss Davis to get Miss Turner for you, that one of you had already carried her off, won, and wedded her also." In Paris it clearly appears that this conspiracy was hatched; and there it was that Miss Davis begun those operations, which were afterwards matured and executed in this country. The moment she returned from Paris she commenced her plans at Shrigley, which was Mr. Turner's place of residence. She then entreated a lady of the neighbourhood with whom she was acquainted, to introduce her to Mrs. Turner, which was accordingly soon after done; and at the first visit she expressed her regret that Miss Turner had returned to school, and hoped she should soon have the pleasure of making her

acquaintance. About the 1st of March, the Wakefields, who were Miss Davis's travelling friends, arrived at Dr. Davis's house, in Macclesfield. Is it likely that they quitted the gay circle of Paris to travel four hundred miles to see Macclesfield? No, no ;—they came to execute their scheme—to acquire the necessary information about the family of Mr. Turner, for which purpose they rode about the grounds at Shrigley ; and Miss Davis will be proved to have made, as if by accident, but, as it had since clearly appeared, by design, a number of pertinent inquiries about Mr. Turner, from Mr. Grimsditch, who is his solicitor, and is the respectable gentleman who has the chief part in arranging this most important prosecution. From Mr. Grimsditch she learned that he and Mr. Turner were to set out in a day or two to London ; and in answer to her inquiries respecting Mrs. Turner's health, Mr. Grimsditch informed her, that though her physicians ascribed her illness to a determination of blood to the head, yet, in his own opinion, he believed her to be affected by paralysis. This is very material, as will afterwards appear in evidence. In this way the parties went on, from day to day, obtaining all the information which was requisite for the accomplishment of their purpose ; and on the Monday, when it was ascertained that Mr. Turner had left for London, means were promptly taken to obtain a supply of cash for commencing actual operations in the execution of the criminal enterprise. It will be found that, on the Sunday, Miss Davis applied to a banker in Macclesfield for a loan of £150, upon a very pressing exigency, which rendered the application on the Sabbath imperative. She said it was to relieve a cousin, who had, unfortunately, been arrested ; and she was anxious that his imprisonment should be as short as possible. The money was instantly given upon this entreaty, and in the presence of one of the defendants ; and this £150 was the identical money expended in this wicked purpose. So urgent were the parties to watch the Turner family, that it would appear, that though they left Macclesfield on the Sunday evening for Manchester, they had sent back a French servant, Thevenot (who was not now on his trial, though included in one of the indictments) to Miss Davis for further information. They arrived at the Albion Hotel, in Manchester, very early on the Monday morning, and one of the defendants was there introduced in the name of Captain Wilson. After breakfasting they went to a coachmaker's, where they purchased, for £40, an old carriage, with a barouche box in front. In this they all set out from Manchester at two o'clock on Tuesday morning, having, however, on the preceding evening, despatched the servant, Thevenot, once

more by post, at considerable expense, for fresh instructions from Miss Davis. At last, when, by his return, they had received actual intelligence of Mr. Turner having gone to London, a letter was concocted to be sent forward to the school, at Liverpool, where Miss Turner was, announcing the illness of her mother. This letter purported to come from an attending physician, but is an entire fabrication to further the wicked purpose of the conspirators. The letter is as follows :—

“ Shrigley, Monday night, half-past twelve, March 6th.

“ Madam,—I write to you by the desire of Mrs. Turner, of Shrigley, who has been seized with a sudden and dangerous attack of paralysis. Mr. Turner is, unfortunately, from home, but has been sent for, and Mrs. Turner wishes to see her daughter immediately.

“ A steady servant will take this letter and my carriage to you to fetch Miss T. ; and I beg that no time may be lost in her departure ; as, though I do not think Mrs. T. is in immediate danger, it is probable she may very soon become incapable of recognising any one. Mrs. Turner particularly wishes that her daughter should not be informed of the extent of her danger, as, without this precaution, Miss Turner might be very anxious on the journey ; and this house is so crowded, and in such confusion and alarm, that Mrs. T. does not wish any one to accompany her daughter. The servant is instructed not to let the boys drive too fast, as Miss T. is rather fearful in a carriage.

“ I am, Madam, your obedient servant,

“ JOHN AINSWORTH, M.D.

“ The best thing to be said to Miss T. is, that Mrs. Turner wishes to have her home rather sooner, for the approaching removal to the new house ; and the servant is instructed to give no other reason, in case Miss T. should ask him any questions. Mrs. T. is very anxious that her daughter should not be frightened, and trusts to your judgment to prevent it. She also desires me to add, that her sister or niece, or myself, should she continue unable, will not fail to write to you by the post.

“ Mrs. Dolby.”

The whole of this is, I again tell you, an infamous fabrication—there was no such physician, no such sudden illness, no such message, but just as much of truth in the complexion of the story as gave it an air of probability. About two o'clock on the Tuesday morning the two Wakefields

and the Frenchman set out from Manchester in the newly-purchased carriage. William was left behind at Warrington, which was half-way ; the other brother and the servant drove on towards the school at Liverpool. Edward Wakefield, however, came out before they reached the school, leaving the man to drive up to the door, sitting on the coach-box. The servant instantly obtained admission to deliver the fabricated letter, which, at the time, and under the circumstances, was calculated to impose on the ladies at the school. Thevenot described himself to have been lately hired by Mr. Turner, as his own servant, for the new house into which that gentleman was, at that time, about to remove. This was to account why the young lady could not know his person, as he was a new comer into the family ; and to explain away the appearance of the carriage, he said it belonged to Dr. Ainsworth, and he was, upon his return, to take up Dr. Hull in it at Manchester. There appearing no doubt of the veracity of the man's statement, the lady at the school immediately prepared Miss Turner for the journey. There was not the slightest reason for their knowing anything of this base project, which had since been to them a source of the greatest grief, and now, perhaps, when the whole business had been developed, their want of any suspicion of stratagem could be accounted for in the lines of the poet :—

“For oft where wisdom wakes,  
Suspicion sleeps at Wisdom's gate ;  
And to Simplicity resigns her charge—  
Thinking no wrong, where no wrong seems.”

Miss Turner accordingly set out in the carriage, the Frenchman sitting on the box ; but Edward Wakefield, probably through some blunder, missed them in the neighbourhood : they drove to Warrington, where William Wakefield was waiting the result of the enterprise, and when he saw that the prize was carried off, he was, under such circumstances, extremely anxious to know what had become of his brother, and he set out after him towards Liverpool. They met on the road, but before he left Warrington he wrote a letter to his brother, in the event of his arrival at the inn, before they met on the road. This letter never reached the person to whom it was addressed, and is as follows :—

“Go immediately to where we dined yesterday, on cod and mutton

chops. *Elle doit y attendre son pere ; elle est partie d'ici à 11 heures.*— Write to Mr. Wilson at the same place from wherever you succeed.

“ Captain Wilson.”

On the road to Liverpool the brothers met, and hastened away to Manchester, where the Frenchman had previously arrived with the young lady. Edward introduced himself to her at the hotel, and said that he expected her father, who was his particular friend, to have been there before him. She expressed great anxiety to see her father, and also to visit her uncle, who lived near Manchester. “ You will miss your father, if you do,” was the reply, “ for he will be here directly.” It would not have done to have permitted her at such a moment to have visited her uncle, and therefore great dexterity was practised by the servant and one of the Wakefields. On being shewn into the parlour of the inn, the Frenchman told the waiters that he would attend upon the young lady. It was here that Edward Wakefield introduced himself to her. He is a young man of a gay and somewhat fashionable air, and a complete master of all the arts of dissimulation, which he instantly practised with consummate address. Miss Turner had at that time heard of the commercial distress which had suddenly broke upon the country, and had just recollected hearing her father talk of the sudden reverses which some of his neighbours had endured, and remark a few days before, at the school, when he happened not to have in his pocket at the moment within a few pounds of the amount of her school-bill, that such a young lady (naming one) had been lately taken home, her family being unable to maintain her education at that establishment, and he added (not speaking seriously at the time), “ and so may I be obliged to take you home, if I cannot pay up your bill.” Miss Turner, who is of a confiding and generous disposition, had this observation fresh on her memory, and never doubting its sincerity, was prepared, in some degree, for the statement which Edward Wakefield made to her on this occasion : for he told her in the Albion Hotel, that her mother’s illness was not the cause of her being abruptly removed from school, but her father’s sudden embarrassment, owing to the failure of the Macclesfield and Blackburn Banks (where she knew he kept money). Struck at the instant with her father’s remark about his reverses of fortune, and his being unable to pay the balance of the bill, she believed the story which was thus told her, and

consented to go at once into Yorkshire to meet him, as some excuse was framed for his not coming on to Manchester, where he had promised to join them. In this manner was the young lady purloined from her school by a fraudulent pretence, and without her consent—for to what had consent been obtained? Not to travel with these persons through the country, but to go and see her sick mother. She was, however, in the expectation of seeing her father, carried into Yorkshire from Manchester, but, in the course of the night, brought by a circuitous route to Kendal, and then to Carlisle, where they assured her her father would be in waiting to receive her. This young lady was thus hurried from place to place for 24 hours; and while she was quite overpowered by the fatigue of this journey, she was for the first time, informed at Carlisle, by Edward Wakefield, that it was intended she should marry him to save her father from ruin—that a rich uncle of his (the defendant's), a banker, had advanced her father at his (Wakefield's) desire, £60,000, which, by the failure of his own banker, he was now unable to repay, and that thus, while on the brink of irretrievable ruin, an expedient had been suggested by his friend and solicitor Mr. Grimsditch, which might yet save the family. "That expedient," said Wakefield, "is for you to marry me, when my rich uncle will make a handsome settlement upon us, and spare your father, who will then be able to save his family from being turned out of doors pennyless." Perfectly astounded at this proposal, the young lady said, "I must first see my papa." "Well so you shall," was the answer. "We are to find him here, at Carlisle, where he is not far off." They drove up to the door of the inn, with four horses, and, as was natural, this cavalcade attracted a crowd of idle gazers to the spot; the two defendants stepped into the inn, leaving the lady in the carriage, and preventing the landlady from paying her usual attention, by saying that she did not mean to alight. On coming out from the inn they re-entered the carriage, and told her that her father was then with Mr. Grimsditch (both of whom were actually at the instant in London) in an inner room, but could not stir out, as the people outside were bailiffs awaiting to arrest him; and that he had entreated her to hasten off to the Scottish border to be married, and return quickly with the certificate of that ceremony, which would at once release him from his duress, and from all further uneasiness and inconvenience. Can any man hear these circumstances and doubt that a gross delusion was practised on this lady? And one of the Wakefields at the same time pretended to read a letter, in which a desire was expressed by her friends,



that she should show the same fortitude on this trying occasion which was evinced by her excellent parents. In this manner, by fraud, and terror for the impending fate of her family, she was carried into Scotland, where, in the hope of saving from ruin those most dear to her, she was persuaded to give her hand to one of these defendants, in the presence of a drunken blacksmith, a landlord, and this French servant. This ceremony performed, she expected to be permitted to throw herself into the arms of her father, at Carlisle, and to congratulate him upon a delivery from embarrassment by her means. However, when they returned to Carlisle, these persons contrived to persuade her that her father, upon hearing of her marriage from the postillions, who had hastened back the moment it was over, had left word that he had set out for Shrigley or London, to put the conclusion to the favourable adjustment of his affairs, and that he wished her to follow him. Under the belief that this history was true, she travelled south again with these defendants, and they slept on that night in three separate beds, at Penrith. But no misfortune happened to this lady there, for if any violence had been attempted in England, the parties would have been within the reach of the law, and liable to punishment for the capital offence. They proceeded afterwards on their route to London, and arrived at the Brunswick Hotel, in the neighbourhood of Hanover-square. The history of the journey was exactly this:—They took Miss Turner from school at Liverpool, on Tuesday; on Wednesday they hurried her into Scotland; they rested on that night at Penrith, and travelling then all Thursday night, they arrived late on Friday night in London. William Wakefield had turned off from them to join Miss Davis, at Macclesfield, on their way, and Edward was met, on his arrival at the hotel, in London, by a friend, who gave him a message, which no doubt was, that he must hurry out of the kingdom, to evade the grasp of justice. Upon this information he told Miss Turner that his friends had just stated that her father had gone on to Calais, where they must follow him. Thither they hastened accordingly, and reached the French coast on Saturday morning, having made this young lady travel a journey of 600 miles in the deepest affliction about her father, and harassed in every respect about the situation of her family, through the machinations of those who had deluded her. Before I state what occurred at Calais, I wish to return for a moment to Macclesfield, where William Wakefield had been dispatched to watch the movements of Mr. Turner's family at Shrigley. The whole scheme was one of fraud; there was no love for this young lady,

the sole object being to get the money of the father, by putting the daughter's hand to pick his pocket. William Wakefield, upon his arrival at Macclesfield, must have stated all that had occurred, for Miss Davis wrote a letter on the Sunday following, which did not reach its intended destination, but had fortunately fallen into other hands. Though this young lady was carried from school on Tuesday, she was never missed at home till the Sunday following, when, in consequence of a letter, the governess was sent for to Liverpool, from Shrigley. Some notice had been publicly taken of the business, by the insertion of the marriage, in the usual way, in some of the London papers. On Sunday, and not till then, was Miss Dolby apprised of the fraud and forgery by which this young lady had been stolen from her protection, and she instantly repaired to Shrigley, to the afflicted family of Mr. Turner. On this very Sunday, Miss Davis appeared to have been very busily employed, for she wrote thus to one of the defendants :—" My dear William,— Mr. Turner did not come down the night you left. My father saw Mrs. Critchley yesterday, who seems very friendly disposed, but she did not know what her mother would think of the affair ; perhaps you ought to write to her, touching the tender chord. Miss Daulby has not yet written to Shrigley," meaning, of course (said Mr. Sergeant Cross), that she had not written to inform the Turners of the departure of their daughter ; and why should she, when she never doubted of her being taken home ; does not this observation show Miss Davis's full knowledge of the abduction ? The fatal intelligence no sooner became known to Mr. Turner, who had left London on the same Friday evening that his daughter had been inveigled into it, and who probably passed her on the first or second stage from the metropolis, than he started off to London again in search of her, with some friends. He was, himself, unable to travel farther than London, but his brother and Mr. Grimsditch proceeded on to Calais, where, upon meeting Miss Turner with Edward Wakefield, walking on the pier, they took the necessary steps to recover her for the family. Upon this, Mr. Wakefield began to insist upon his superior right to her person, the husband having a greater control than the father. She was his wife, he said, and he had a right to detain her. As soon, however, as the veil was removed from the young lady's eyes, she became instantly struck with horror and detestation at the wicked object of this person. She threw herself into her uncle's arms, and when Edward Wakefield said she was his own wife, she turned away with horror from

him. All the parties then went before a magistrate at Calais, who, upon hearing the young lady's statement, restored her to her relatives at once, being of opinion, that a detention acquired by fraud and forgery, could constitute no property for any man; indeed, any other notion would have been horrible, and the young lady immediately returned to England with her uncle. After she left France, Edward Wakefield wrote a letter in confidence to his brother William, which must be taken, if there were any truth in him, to be the real effusion of his own feelings. This letter, by a piece of good fortune, did not reach William's hands, but is now in mine, and is as follows:—

“ Calais, Thursday.

“ My dear William,—I write in haste, to save the post, only to give you news, and nothing else. Mr. Robert Turner, Mr. Critchley, and Grimsditch, arrived by the packet to-day with warrants, \* \* \* I soon knew what they were come for, but would not attempt to avoid the question. Shortly I saw them, and found that, with Ellen's consent, they could take her away. They insisted on seeing her. I could not object. She told *all*, and was anxious to leave me, when she knew all. I expected as much, and therefore made a merit of necessity, and let her go. They tried to take me, but for that they were on the wrong side of the water, as I well knew. I, however, offered to go with them, but begged Mr. Critchley to believe that I would be in England to answer any charge, as soon as I had seen my children and settled my affairs. Nothing could be more hostile than the whole spirit of their proceedings. I could readily have escaped *with Ellen*, but their account of Mr. and Mrs. Turner's state made such a step impossible. I made, and gave in writing, a solemn declaration, that she and I have been as brother and sister. How this may affect the validity of the marriage, I know not, nor could I raise the question. I was bound, and it was wise to give some comfort to Mr. Turner. I am now in a stew about *you*, and wish you were safe. There can be no doubt that the law can punish us. For myself, *I will meet it*, come what may; but, if you are able, get away as soon as possible. I do not care a straw for myself. The grand question now is—is the marriage legal? They all said no, and quoted William and Mary upon me, till I was tired of their majesties names. Pray let me know *that*? But I shall write to nunkey. Do not stay, you can do no good. I shall go to England as soon as possible. Upon this

you may depend. I shall not write again until I hear from you, for fear of accidents. Percy came with the trio, and has witnessed the row. We start early in the morning. Pray write, but say nothing to anybody. I am the person to speak.

“Yours ever,

“William Wakefield, Esq.”

E. G. W.”

What he seems to rely on in this letter is, that the consummation of this atrocious crime was necessary to the legal establishment of his guilt, but that, nevertheless, he had acquired a property in his wife ; and I am told that a gentleman of the law has come here this day to give you evidence of the custom of Scotland on this subject ; and he is, I am informed, to tell you, that by the custom of Scotland, if a man can steal away an infant from her legal guardians, by fraud and forgery, and by the same means get her hand in a pretended marriage contract, the act is to be valid for the benefit of the robber who has purloined her. This, you are to be told, is a real valid marriage, according to the law of Scotland ; and you are to hear it from one gentleman who has been caught in all Scotland to affirm the proposition. But if any such gentleman, bearing the name of a lawyer, shall this day venture to appear here for such a purpose, I think and trust he will never hear the last of it as long as he lives in the world, and more particularly if it shall appear that he has come here voluntarily, and of his own accord, to enlighten us with this opinion. Forsooth, we are to be gravely told, that an act which is (or rather was) a capital felony if committed on English ground, is to be legal and meritorious if done on the other side of the Tweed, and the thief rewarded with the booty, to the eternal misery of the unfortunate victim, and the successful enterprise of her perfidious deceiver. This is to be the defence I understand—and that the lady herself is not a competent witness. This, if true, would make the law worse and more odious than was the practice of that tyrant of antiquity who fastened his living victims to dead carcasses. I will not believe that my learned friend, Mr. Scarlett, will be guilty of so gross an outrage upon law and common sense, and every principle of justice, as to offer such a defence ; and I only allude to it, because such a plan has been bruited about in this court. If this be the nature of the defence, I hope you will mark it as it deserves by your verdict.

The following witnesses were then called :—

William Turner, Esq.—I am the father of Ellen Turner. She is my only child. She was fifteen years of age on the 12th of February, 1826. Her mother is living, but in such bad health as to be unable to undertake the journey to Lancaster. I possess considerable landed property in Cheshire, and also personal property at Shrigley. I was High Sheriff of Cheshire last year. In March, 1826, my daughter was entrusted to the care of Miss Daulby, in Liverpool, with whom she had been at school for three or four years. She had been at home with me from December to February, 1826. There was no alteration in her manners. I never knew anything of Edward Gibbon Wakefield, nor did I know that there had been such a man in the neighbourhood of Shrigley. My daughter never, to my knowledge, had any knowledge of the Wakefields. She had never been at any school but Miss Daulby's.

Cross-examined by Mr. Scarlett (afterwards Lord Abinger).—I have been a resident of Shrigley for seven or eight years; and was called upon by several gentlemen when I was High Sheriff of the county.

Miss Elizabeth Daulby examined by Mr. Brougham.—I keep a boarding school in Liverpool. Miss Ellen Turner was under my care in March, 1826. She was entrusted to me by Mr. Turner. She had been with me five or six years. She had been home the previous vacation, and I think was brought back by Mr. Turner. There was a Miss Greenway at my school for several years, and she was taken away by her father on account of his having become unfortunate in business. When Mr. Turner was last at my house he had not with him sufficient money to pay my bill. On the 7th March, a servant and carriage came to my house, and delivered me the letter which has been read. The servant said he came from Shrigley, and that Mrs. Turner was very ill. He said she had been taken suddenly ill the night before at supper; that the knife and fork fell from her hand. He said he had been lately hired by Mr. Turner, and that Miss Turner would not know him. He spoke like a foreigner, but spoke English very well. I then went to Miss Turner, and told her that her mother was ill, and wished to see her, and that her father was from home. I did not show her the letter, as I was requested not to do so. I inquired if she was to travel alone; the servant said he was to take up a Dr. Hull, at Manchester. The man said that the carriage belonged to Dr. Ainsworth. I do not think Miss Turner had ever before that time seen either of the Wakefields, nor did I ever hear of them.

Mr. Turner recalled by Mr. Brougham (now Lord Brougham.)—I never knew such a person as Dr. Ainsworth.

Miss Daulby in continuation.—I would not have given up Miss Turner if I had not been imposed upon by the letter. Miss Turner went in the inside of the carriage, and the servant went on the dicky. I did not discover the deception until the 12th, when I received a letter from Shrigley, where I arrived on the Monday morning.

Cross-examined by Mr. Scarlett.—I only take a few pupils. Miss Turner was well grounded in her education as far as it went. She had an excellent capacity, and was of an open and confiding disposition, and always remarkable for her ingenuousness. The letter to Miss Daulby was put in and read.

Mrs. Brocklehurst, examined by Mr. Starkie.—I reside near Macclesfield, I was acquainted with Miss Davis (now Mrs. Wakefield). She went to Paris in January, 1826. She was to purchase some things there for me. She went during the vacation of her father's school, and about the beginning of February. Miss Davis was then unacquainted with Mr. Turner's family. She called upon me on her return from Paris, and at that interview Mr. Turner's family were spoken of. I don't recollect which of us introduced Mr. Turner's name. I was induced, from what Miss Davis said, to believe she wished for an introduction to Mr. Turner's family. I proposed accompanying her to Shrigley, if she liked. She said she never had called, and that she regretted not having done so. Mr. Turner's family had lived several years at Shrigley. Miss Davis appeared to be pleased at the idea of going to Shrigley. No day was then fixed upon for the visit. I saw her in a few days after, and we went to Shrigley. We saw there Mr. Turner and Mrs. Critchley (Mr. Turner's sister); Miss Davis inquired particularly after Miss Turner, and said she regretted very much that she had not an opportunity then of seeing her. Various other subjects were spoken of. The call at Shrigley was made a few days after Miss Davis's return from Paris. In the conversation it was stated that Miss Turner was at school.

Cross-examined by Mr. Scarlett—I have known Mr. Turner's family for some years. I was not on terms of great intimacy with Miss Davis. I knew her twelve or thirteen years. She called upon me oftener than I called upon her. It was I who proposed to her to introduce her at Shrigley. I took Miss Davis in my carriage. She did not propose to leave a card in preference to seeing the family. I requested Miss Davis

to take a letter to my brother in Versailles. Up to that time I only knew the present Mrs. Wakefield as Miss Davis.

Mr. Grimsditch—I have been for several years solicitor to Mr. Turner. I live near his house. I knew Miss Davis for many years. I saw her on the 1st or 2d of March; in consequence of a message I received, I accosted her in the street. The two Wakefields were with her. Miss Davis asked if she might ride into Adlington grounds, as they were going to see Shrigley and Lyme. On the Saturday morning following I saw her again. I was walking up the street near her father's, and had passed his house about one hundred yards, when Miss Davis met me, and told me that she and her friends had been to Shrigley and Lyme, but that she had not seen me there. She then began to speak of Mr. Turner's appointment as High Sheriff, and that she supposed he was from home, as she had not seen him. I told her that Mr. Turner had been very much from home of late, in consequence of the death of his eldest brother. Miss Davis said to me, I believe Mrs. Turner is very ill, which I said was the case. She asked me the nature of her complaint. I told her it was said by the doctors that it was a tendency of blood to the head, but that I thought it was an attack of paralysis, and that I had made that remark to Mr. Turner, who thought otherwise. She then began to talk about the preparations which were making for Mr. Turner going to the Assizes. I said I knew very little of it, and I also said that Mr. Turner was then about going to London. She inquired if I was going with him. I said I was to go on the Monday night, but not in company with Mr. Turner.

Cross-examined by Mr. Scarlett.—At the first interview, I told Miss Davis that I was going to Adlington, and if I met her there, I would have the house shown to her. I am the agent for that property. It was expected from Mr. Turner that a public breakfast would be given at Shrigley by Mr. Turner. The breakfast was given in April. There were ladies at the breakfast, and a great crowd there.

Mr. Bagshaw, a banker of Macclesfield.—I knew Miss Davis. She applied to me for money to the amount of £150. She said she wanted it to pay an account of Dr. John Davis, a cousin of hers. I went to get the money. She did not come with me. I took an account of the notes. I gave her a £50 Bank of England note, No. 14,272, a bank post bill for £60, B. 1,429. [The two notes were handed to witness, which he identified.] I gave her also eight five pound bank notes—all Bank of Eng-



land. When I gave them, I was about writing an order upon the Manchester Savings' Bank, which Miss Davis was to sign, she showing me she had so much money. Two gentlemen came in. They were the two defendants. Mr. E. Gibbon Wakefield went towards the fire; and when Miss Davis was signing the order, he asked if she was signing her will. I was served with a subpoena the 1st of August last, and went to tell Miss Davis so. I said I did not know what to say about the business, except the money transaction. She said she advanced the money because they had some French bills which they could not part with there. That is all that passed at that time, except I asked her if she had informed her father of the money transactions, and she said she would. When the money was advanced, not a word was said of French bills. I have accommodated her once or twice, but she did not bank with us.

Cross-examined by Mr. Coltman (afterwards Sir Thomas Coltman, a Judge of the Court of Common Pleas)—I should have had no difficulty in advancing the money, though she had not said a word about French bills, or gave an order for it.

Mr. William Carr, examined by Mr. Brougham—I am a coachmaker at Manchester. I recollect the two defendants coming to my shop on the 6th of March last. Edward Wakefield said he wanted to purchase a second-hand carriage. I showed him one. The colour was darkish green. I asked £40 for it. He did not object. It wanted repair. I repaired it, but he said it must be done by six in the evening—that it would be no use if not done then. The address he gave was Captain Wilson, Albion Hotel. He then paid me £2 on account. He came again at three, and asked if it was going on. I sent it a little before seven. I went myself and saw Edward Wakefield. He came to look at it. He paid me for it in a £60 bank post bill. I think that is the note. I did not endorse it. I gave him change £20, and returned him the £2.

James Houlgrave.—In March last I was a waiter at the Albion Hotel, in Manchester. I recollect two gentlemen coming on Monday, March 6th, about half-past seven in the morning. They came in a Winslow chaise. I see one of them here, Mr. Edward Wakefield. The name he went by was Captain Wilson. I also see the other, Mr. William Wakefield. They breakfasted, dined, and had tea there. I don't recollect what they had for dinner. Mr. Carr, the coachmaker, came there in the evening, about six; he asked to see Captain Wilson. I showed him in; he came, I



understood, about a carriage, which he had brought to the door. It was a green carriage. A servant came with them, and remained till the evening, when a post-chaise was ordered to take him the first stage to Macclesfield ; his name was Thevenot. I could not say whether he was a foreigner, for he spoke very good English ; he went alone. The next morning these gentlemen were not there. Thevenot came the day after, about half-past twelve. This was on the Tuesday ; he came back in a green carriage. A young lady came with him. Thevenot was outside on the box, and the lady inside. The lady was shown into a room. After she was shown into a room, he said if the bell rang, he would attend her himself. I left it to him to attend upon her. I saw the two gentlemen about an hour and upwards after the lady came. They came in a chaise and four horses ; the horses appeared as if they had gone quickly. Mr. E. Wakefield was shown into the room where the lady was. An order was given for horses in about five minutes after they came. The order was, four horses to Delph immediately. The horses were put to the green carriage. This was done quickly. The bell rung, and I went into the room. Mr. E. Wakefield and the young lady got into the carriage. William Wakefield got on the box. Two of the blinds were up. I attempted to put them down, when Mr. E. Wakefield said, " Never mind, I'll put them down myself." Thevenot was also on the box ; they then drove off on the road to Delph.

Cross-examined by Mr. Scarlett.—When the lady was shown in, she went into a room looking two ways, one window looking to Oldham-road, and the other to Delph. The housekeeper took her some tart, and custard. She had no wine or spirits. When I went into the room she was looking out of the window, but made no remark. When I went in again she was in the same place, and Mr. E. Wakefield standing by her ; nothing particular passed. Mr. E. Wakefield asked for a glass of Madeira, which I brought. When I returned the third time to tell her the carriage was ready, he paid me for the Madeira. I can't say she was tall, or what her age was. Mr. Wakefield handed her to the carriage. They were there about ten minutes altogether. Mr. E. Wakefield asked if he came back in six weeks, if he could have a bed-room and sitting-room up stairs ?

Joseph Blackshaw, examined by Mr. Sergeant Cross.—In March last I was ostler at the inn at Macclesfield. I remember seeing two gentlemen who were at Dr. Davis's at that time. There was also a servant of

theirs. I recollect his coming to the inn in a chaise, on Monday, the 6th of March. He arrived about six or seven in the evening. I learned he came from Bullock Smithy, the stage between Manchester and Macclesfield. As soon as he came he inquired the road for Park House, the seat of Mr. Poole, the banker; he, however, turned to the right, to Dr. Davis's. I heard a person tell him the way to Park House. He was away about half an hour, as near as can be. I saw him come back to the inn. He ordered the chaise out again immediately. The driver said the horses had not eaten their corn, but he appeared very anxious to get away. He got away in about half an hour, and in the interval he went into the chaise, and stopped there. He was not away long enough to have been at Park House.

Cross-examined by Mr. Park.—I met the same chaise on Sunday evening before, with the two defendants in it.

Joshua Richards, examined by Mr. Williams (afterwards Sir John Williams, a Judge of the Court of Queen's Bench)—I am a post-boy at the Albion Inn. I remember taking a servant on the 6th of March in a chaise to Bullock Smithy. In the course of the night (about two) I was called up to take two gentlemen and a servant to Irlam, on the way to Warrington. I should know one of the gentlemen again; it was Mr. Edward Wakefield. I do not know the other.

James Brown, examined by Mr. Brougham.—I am a post-boy at the Legs of Man at Prescott. I recollect a green carriage coming in between six and seven in the morning. It was my turn, and I drove it to Liverpool. I was desired to inquire for Miss Dolby's seminary. There were two gentlemen inside and a servant outside. Mr. Edward Gibbon Wakefield was one of the gentlemen. I drove to the Blue Bell, and there he desired me to inquire for Miss Dolby's. I drove them into the Derby-road, then into Islington-street. He then said I was driving them out of the way, and they got out, leaving the servant inside. On going out, they said, "they were much obliged, he gave them a good lift." The servant said, "they were welcome," and Mr. E. Wakefield gave him something, but I cannot say what it was. I then drove to Miss Dolby's. After a little time a young lady got in, and the servant rode outside. He desired me to drive as quickly as I could. I drove back to Prescott.

Jane Hughes, examined by Mr. Starkie.—I am the landlady of the Nag's Head at Warrington. On Tuesday, the 7th of March, I recollect a

gentleman coming in a carriage about four o'clock in the morning. He had breakfast. I recollect a green carriage coming in the forenoon, from Prescott. There was a servant outside ; but I did not see who was inside. They went off again as soon as the horses were put to. A letter was given to me ; but I cannot say, in the hurry of business, who it was that gave it to me ; but, I believe, the under-waiter. [The witness identified the letter.]

William Edmunds or Edwards proved the hand-writing to be that of William Wakefield.

The following letter was then read :—

“Go immediately to the place we dined yesterday, on the cod and mutton chops. Elle y doit attendre son pere ; elle est partie d'ici à onze heures. Write to me immediately from wherever you succeed. Address to the same place to Mr. Wilson.

“To Captain Wilson.”

Mrs Holmes, examined by Mr. Sergeant Cross.—I am the landlady of the Bush Inn at Carlisle.—I recollect a green carriage arriving at my house in March last ; it was on Wednesday, the 8th of March, about eleven o'clock in the forenoon, I saw the company who arrived in it. It consisted of two gentlemen and a lady, and, I believe, a servant. I have seen the lady since, but not that I should know her. The gentlemen got out of the carriage, but the lady remained inside. Our waiter went first, and I went to ask her to alight ; but the taller gentleman, (Mr. Edward Wakefield) came to the carriage door and said, “No.” One blind was up ; but the other, near the door, was down, so that I could see her. Something occurred to me to induce me to ask her to alight. A lady with me said she looked so dispirited, that I thought it my duty to go and ask her to alight myself. I knew Mr. Edward Wakefield. He is here now. The carriage stopped about fifteen minutes before it set off again. They returned in the course of that day, about six in the evening.

Cross-examined by Mr. Scarlett.—I don't know where the gentlemen were during the time ; but I believe one was near the carriage. The waiter opened the door for the gentlemen. His name was Thomas Atkinson, and is here. When they returned they stayed about two hours. I saw the lady then. She remained in the parlour, but I did

not see much of her. They did not dine with us, but they took tea. I did see them during tea. They left the carriage, and went off in a post-chaise. The carriage was sent to the coachmaker's, being out of repair.

Sarah Carwen was on a visit with Mrs. Holmes at the time in question. I saw the young lady in the carriage, who seemed to me to be very much depressed. I observed at the time to Mrs. Holmes, that she looked like the very picture of despair.

Cross-examined.—I did not rush to the door to let her out. It was not my business to do so.

James Hamilton, examined by Mr. Williams.—I am waiter at the inn at Penrith. I know both the Mr. Wakefield's. I remember them coming from the Chap and Kendal road. They returned again. They passed North between ten and eleven on the 8th of March, and returned the same evening about eleven. I recollect changing a £50 note. There was a lady with them both going down and coming back. There was no servant with them.

Cross-examined by Mr. Park.—They did not stop more than ten minutes. They had no wine nor any refreshment. The first time I opened the door for them the lady did not get out. They only stopped to change horses. The lady seemed very composed. On their return they slept at our house. They went into a sitting-room together. I heard nothing pass between them. She did not appear under any restraint. They breakfasted together, and went off by the mail. She first came down to the breakfast-room, and when I saw her she was reading a book. I asked her if she would have breakfast? She said she did not know, I must ask the gentlemen. I did; and they desired me to get it ready immediately. I attended at the breakfast-table. The gentlemen were very attentive to her. Nothing remarkable passed. I asked them about beds, when Mr. Edward Wakefield said, "I must go and see where you sleep, my dear."

By Mr. Williams.—They had separate beds.

Margaret Dunroody.—I was the chambermaid at Penrith this time twelvemonth. I recollect two gentlemen and a lady arriving on a Tuesday evening. I should know one of the gentlemen again. Witness then pointed out Mr. Edward Wakefield. They slept there that night. They had three beds.

Cross-examined by Mr. Coltman.—I did not see them the first time they arrived. I saw them when they returned in the evening. They rung the bell, and ordered three separate beds. Mr. Edward Wakefield ordered them. I heard him say, "I must go and see where you sleep, my dear." He did go and see the bed. She did not seem dejected. I saw her coming down stairs about eight o'clock next morning, but did not speak to her. The gentlemen came down in about a quarter of an hour after, and went into the room she had been in the night before. I saw nothing but very loving attention on both sides.

By Mr. Baron Hullock.—Were the beds in three separate rooms?—They were.

Robert Jolly.—I was waiter at the Brunswick Hotel, in London, in March last. On the Friday before Mr. Edward Wakefield and the lady came, Wakefield, the father, and some of the brothers came. Thevenot came also. He said he was ill, and went to bed. Mr. Edward Wakefield came with a young lady that evening about ten. I told him his brother was above, and showed him into that room. The brother was not William. I saw the lady in the bedroom, and she was there crying. They asked her to take something, but she would not. Mr. Wakefield said, you had better. They remained about an hour and a half, and then set off for Deptford in a chaise and four. Edward Gibbon Wakefield asked to see Thevenot, and saw him for some time. The brother said, I had better pay the bill, as you may not have money enough to take you off—and handed a handful of notes. The brother went the next morning to the Gloucester Coffee-house, and said he was going to Reading.

Cross-examined by Mr. Scarlett.—I served subpoenas, but was not paid for it. I did it only in a friendly way. I saw Miss Turner in her bedroom from the landing. When Mr. Edward Wakefield was going he gave me some money to have their departure put in the newspaper, "Mr. and Mrs. Gibbon Wakefield, for Paris." He wrote it on the paper. I have been at Molloy's, in Bond street, for about six months since. I am now in no place—nor want it, for I have capital to set up a chop-house. I refunded Mr. Molloy £1 5s., but it was a dispute between us. Mr. Molloy did not discharge me on that day, nor in consequence of this. I stayed in the house three weeks afterwards; and left in consequence of a dispute between me and Mrs. Molloy, on account

of breaking some things. He never refused me a character, nor have I applied to him for one.

Re-examined.—I have a brother still at Mr. Molloy's.

Mr. Grimsditch, the solicitor, recalled.—I set out for London on the 6th of March, and got there the following evening. Mr. Turner got there about two hours after me. I first learned about Miss Turner by the newspapers; on Saturday, the 11th of March, the marriage of Miss Turner was announced. On Tuesday, the 14th, I learned the particular character of the transaction early in the morning. I waited upon the Secretary of State, and got warrants. I got to Calais between three and four o'clock on Wednesday, 15th March. Mr. Richard Turner, Mr. Critchley—the two uncles of Miss Turner, Mr. Walford, and a Bow-street officer, came with me. I saw Mr. Edward Wakefield in the Court-yard of Guillac's Hotel. I went up to him in company with Richard Turner and Critchley. I mentioned my name, and where I came from, and he appeared to know me, and said, "Will you be so good as to walk into my room?" I went to his room, with Mr. Richard Turner, up stairs. I told him we had come there by desire of Mr. Turner, the father, to take back his daughter, whom he had taken away in a very improper manner. "But," said he, "I understand you have taken legal proceedings against me." Pointing to Ellis, the Bow-street officer, he asked, "Who is that man?" I desired Ellis to withdraw, which he did, and I told him we insisted upon seeing Miss Turner immediately. He said, "I wish to know whether you intend to prosecute me?" I told him, "we did. How could he expect anything else?" that he had stolen Miss Turner, and I told him I had a warrant in my pocket, and a despatch in my pocket from Mr. Canning to Lord Grenville at Paris. He said he knew all about that warrant, and about what had been done in London; his friend Percy had come in the same packet. Mr. Critchley then entered the room. He again inquired if it was really intended to prosecute. I told him the strongest measures had been resorted to, and would be; that he could expect nothing else. The first thing I demanded was to produce the young lady, and in a peremptory manner, I told him to say yes or no. He then asked, with some agitation, "But is she to be my wife?" I told him we would not enter into that question; that the act he had been guilty of was a most atrocious one. That he had got possession of Miss Turner, whom he had seen a mere child; and that he deserved to be shot.

I also added, that he had struck a blow at the peace of the family that never could be repaired. That it would be the death of Mrs. Turner, if she were not dead already; and that we had left Mr. Turner in London, unable to go another yard after his child. He said my animadversions were severe; he did not justify himself. I said if I had a daughter, and a man should take her off the same way that he had taken off Miss Turner, I would send a bullet through his head. Then he asked, "Is the marriage legal? If it is, I must keep her; if not, I can have no claim to her." I told him it was not only illegal, but that he was liable to a severe punishment. I told him an act was passed in the reign of Philip and Mary, which declared the marriage void, and also subjected the party to a heavy punishment. I told him it was useless to go into this discussion. "It is clear," said I, "we have a right to take back Miss Turner, and take her we will. Both Mr. Critchley and Mr. Richard Turner peremptorily insisted upon seeing her; and I told him I should seek the assistance of the police at Calais, if he refused. He told me he had more interest with the police than I had. He said if she was to be his wife, it was desirable certain matters should not be disclosed, and that certain questions which he should propound, should not be asked her for her own sake. He again spoke of her being his wife, and Mr. Critchley said he wondered how he could expect them to enter upon such discussion. They should first see her; for he might have made some impression. He said, "Oh, you'll find her perfectly passive. She may think favourably of me, but nothing compared with the unbounded affection she has for her parents. I dare say she will fly from me to you, the moment she sees you." He said he wished to make every reparation; but if she was to be his wife, he was anxious certain facts should not be disclosed to her, and he desired to be present at the interview. Mr. Critchley said, I wonder you can ask it, Mr. Wakefield. We must see her without any restraint. He then asked that he might see her after, which was agreed to. He then went down stairs, and I followed him; and in about two minutes he brought her from a room said to be Madame Guillac's room. I went up stairs again before them, showed her into the rooms where her uncles were, and shut myself and Mr. Wakefield out, who said to me, "Well, Mr. Grimsditch, I assure you, upon my honour, Miss Turner is the same Miss Turner as when I took her away." I said I was very happy

to hear it. I then went into the room where Miss Turner was with her uncles, and I learned there the vast number of falsehoods which had been told. Mr. Wakefield came into the room in about twenty minutes after. We sent for him, according to Mr. Critchley's pledge that he should see her. When he came in I said, "We find you have practised upon this child the most extravagant fraud and deception ever heard of." I told him it was a very cruel case; that we should send her to England, and put him in the custody of a Bow-street officer. He said I was on the wrong side of the water for that. I told him the police would assist, and again produced the despatch from Mr. Canning. He told me neither would avail—he claimed her as his wife. At length I said, "I am quite sure, Mr. Wakefield, it is an illegal marriage." And upon claiming her again, Miss Turner spoke for the first time, in his presence, saying, in great agitation, "I am not your wife." She clasped her uncle round the shoulder, in wild agitation, and said, "I am not your wife—I'll never go near you again—you have deceived me." He said, "You must acknowledge I have behaved to you as a gentleman." "Yes, I do acknowledge that; but you have deceived me." He adverted frequently to the legality of the marriage, but I said to him, I was surprised that he could for a moment suppose this to be a legal marriage; that I had heard he had moved in good society, and could not be ignorant that force or fraud would make a marriage illegal. He said, "I did not use force." "What do you call it, then?" said I; "you first got possession of her by means of a forged letter. She was wholly in your power." He said, "I don't attempt to justify my conduct."

Cross-examined by Mr. Scarlett.—Mr. Critchley said he had taken the best opinions, and all said the marriage was void; that Sir R. Birnie's opinion was taken, and he pronounced it illegal. (A laugh). I told him the statute of Philip and Mary made it punishable, and that by the statute of Henry it was void. Miss Turner heard me say so, I have no doubt. Whilst I went to the police-office in the first instance, I sent persons in various directions to look for them. The Commissary came into the room, and I understood him to ask her, in French, whether she wished to go with Mr. Wakefield or her uncle, and she said, with her uncle. I did not hear the Commissary say, that if she was his wife, he had no power to take her away.

W. Edwards proved Edward Gibbon Wakefield's handwriting.



Mr. Ayton proved Miss Davis's handwriting. The three following letters were then put in and read :—

“MISS DAVIS TO WM. WAKEFIELD.

“ Sunday Morning.

“ Dear William,—Mr. Turner did not come down the night you left ; it was a mistake. My father saw Mrs. Critchley yesterday, who seems very kindly disposed, but she did not know what her brother's feelings would be. Perhaps Edward or Madame ought to write to her, touching tender chords. The old uncles have been written to by her wish. Miss Dolby has not yet written to Shrigley, but Miss Turner (the niece) wrote to her yesterday. This is all Mr. Critchley's information to my father.

“ Ever yours,

“ F. D.

“ You must not let a foolish account of the affair get into the paper—it would much annoy Mr. Turner, I am sure.”

“MISS DAVIS TO R. RANDALL.

[No date.]

“ Dear Sir,—I am greatly obliged by your kindness in sending the paper. I will thank you to send me a line, directed, P. O , Buxton, tomorrow, where I shall be. I wish to know whether William is in England. I heard yesterday there would be a warrant for him ; and also a hint that a search would be made in Pall-mall for papers, &c. I knew it would have been awkward to you to have any which were committed to your care brought forward, as it might implicate you. If you receive a communication which might surprise you, you will now know the reason. I feel many obligations to you ; and I am, dear Sir, most faithfully,

“ F. D.

“ Mr. Randall, 34, Pall-mall.”  
(Private.)

“MISS DAVIS TO R. RANDALL.

(Post-mark, Congleton—London delivery-mark, 21st March.)

“ Mr. Randall, in whom it is well known confidence can be placed, is requested to take care that the enclosed is safely delivered as soon as possible. A newspaper is also sent for Mr. W. Wakefield. If there

could be any means of preventing the paragraph in the *Courier* inserted, and also one which may have appeared in the *Macclesfield Herald*, from finding their way to the public London papers. The paragraph in the *Courier* is, in fact, the only objectionable one. Mr. Wakefield himself would object to any interference with papers, and therefore it is left to Mr. Randall's discretion.

"The letter to Mdlle. Blanc, under Lord B.'s cover, to be forwarded, as soon as possible.

"Mr. Randall, 34, Pall-mall, London."  
(Immediate.)

Miss Turner was then called, and was handed in by her father, who had gone for her. She was accompanied by an elderly lady, who sat beside her. There was immediately a simultaneous movement among the dense audience with which the Court was filled, to get a glimpse of the young lady; but in consequence of objections taken to her evidence, she was taken out of the Court again.

After an argument on the part of the counsel, the Judge decided that he would exercise his discretion in allowing Miss Turner to be examined.

Miss Turner was then again led into the court, by her father and a friend. She entered by the side door, on the left of the judge, and was placed in front of the ladies' box, where she stood on the right of the crier, directly opposite to the jury. She had on a plain black silk dress, and a leghorn bonnet, trimmed with scarlet ribbon. She looked extremely well. Her face was pleasing, her complexion good, and the expression of her lips peculiarly beautiful. Her figure was elegant, and her carriage was easy and graceful. For her age she was rather tall, but not above a fair height, and her appearance was womanly. Edward Gibbon Wakefield sat, with his eyes fixed on hers, only a yard or two to the left of her point of view as she looked past him to the jury, but she never permitted her eyes to meet his nor betrayed the least agitation. She gave her evidence with admirable calmness and distinctness.

Mr. Scarlett said—If you examine Miss Turner, you must take the consequences.

Mr. Sergeant Cross.—Yes, I will.

Mr. Scarlett, addressing Mr. Baron Hullock—Your Lordship will be good enough to take a note of my objection.

Examination of Miss Turner—(she was sworn)—I am daughter of Mr. Turner of Shrigley. I went to school at Liverpool in the latter end of February, or beginning of March last year. On the 7th of March I went from school in a carriage. I went by the desire of Miss Elizabeth Dolby. I went away in consequence of a letter she told me she had received. I went into a carriage, and was told that I was to go to Manchester first, where I would meet my papa, and from thence to Shrigley. I knew a Miss Greenway, who had left the school a short time before. I believe she left on account of her father's difficulties. I proceeded to Manchester, and when arrived there went into a house—an hotel, I believe. While there, a stranger came in, whose name I afterwards found to be Mr. Edward Gibbon Wakefield. I never saw him before. When he came into the room I was rising to leave it, but he requested me not to go. After requesting me not to go, he said he was commissioned by my papa to take me to him; that I might be sure it was no light circumstance which prevented him from calling for me himself, and that it was the state of papa's affairs which induced him to send for me home. He did not then, but said he should afterwards, explain what state my papa's affairs were in. I remarked that I thought I was sent for to go home on account of mamma's illness. He replied, the facts stated in the letter to Miss Dolby were not true; that it was written so that Miss Dolby should not know why I was obliged to go home. I don't distinctly recollect that he mentioned the place where papa was at that time; but he told me I was to go home. I saw another stranger after that, but did not know his name. He only told his servant to tell the other gentleman to walk in. I believe it was the same servant who drove the carriage from Liverpool. I don't remember anything particular the other gentleman said when he came in; we went in the same carriage. He did not introduce this gentleman to me, but he spoke to him as his younger brother. This gentleman turned out to be Mr. William Wakefield. I had never seen him before. My reason for going into the carriage again was because I imagined I was going to meet my papa. I was taken as far as Halifax. Both the Mr. Wakefields accompanied me, and a servant. When we got there, Mr. Edward Wakefield said, if we did not find letters there, or see my papa, we should go on to Kendal, as we were sure to find him there. I went on to Kendal, but had no object in going but to find my papa. I had no other object. I stopped some time at Kendal, and then went on to Carlisle. At Kendal, Mr. Wakefield read a letter at the window, with his

brother. I did not see it. He then said my papa was not there, but that we should soon find him. On the next stage from Kendal Mr. Wakefield again spoke about my father's affairs. He said he received a letter from papa, authorising him to communicate to me the state of his affairs. He then told me that the bank of Ryle and Daintry, at Macclesfield, had failed, and that papa would be ruined by it, but that his uncles were bankers at Kendal, and had lent papa £60,000. This, he said, had relieved him for the present, but that afterwards the Blackburn Bank failed, and then his affairs were in a worse condition than before. He said his uncles demanded security for the sum they had lent. The security was the estate of Shrigley; and then he said, your papa may be turned out of doors any day. He then said that it was suggested, by Mr. Grimsditch, I believe, that he (Mr. Wakefield) should become my husband, that the property would then be mine, and that, of course, I could prevent my papa being turned out of doors. I made no reply to this proposal at the time. He adverted to the subject again before we got to Carlisle, and frequently desired to know what conclusion I had come to. I said I should give my papa an answer when I saw him. Mr. Wakefield then said my papa had crossed the borders, and that the sheriff's officers were in pursuit of him. The carriage stopped at the Bull Inn, in Carlisle. Both the Mr. Wakefields got out. I don't know how long they stopped away. It was not an hour. I had been travelling from the time I left the school till I arrived at Carlisle. I had been up all night. Just as the carriage was about leaving Carlisle, Mr. William Wakefield, drawing up the blind, said he had something important to communicate to his brother. I did not expect to meet my father at Carlisle; I expected to meet him across the border. Mr. William Wakefield said he had seen my papa in Carlisle, and that Mr. Grimsditch was with him; that he was then concealed in a small room at the back of the house; that he had made two attempts that day to cross the borders, but could not. He meant the borders between England and Scotland. Mr. Wakefield said, the persons you see around the door are sheriff's officers, in search of your papa. Mr. William Wakefield also said that Mr. Grimsditch entreated him not to stay in the room, or they should be discovered, and took him by the shoulders and turned him out at last. He brought me a message; it was that my papa requested, if ever I loved him, I would not hesitate.

Mr. Baron Hullock.—To do what, Miss Turner?—To accept Mr. Wakefield for my husband.

Mr. Sergeant Cross.—What did you say to that?—I consented.

What induced you to consent?—The fear, that if I did not, my papa would be ruined.

Did you believe what he told you on that subject?—I did.

You then crossed the borders to Scotland?—I did.

Did you repeat the consent in Scotland in the presence of any person there?—Yes.

Mr. Scarlett.—Allow me to ask you two or three questions, Miss Turner; I shall not trouble you long.

Cross-examined.—You went through a form of marriage in Scotland?—Yes.

You had a ring?—Yes.

But it was too large for you, and another was bought after you got to Calais?—Yes.

You dined in Scotland?—Yes.

Did you believe you were the lawful wife of Mr. Edward Wakefield?—Yes.

And you believed that, till you were informed otherwise at Calais?—Yes.

Did you write a letter to your mother from Calais, in which you used the name of Wakefield?—Yes.

When you saw your uncle and Mr. Grimsditch at Calais, they assured you the marriage was void?—Yes.

Re-examined by Mr. Sergeant Cross.—You were asked, Miss Turner, about a letter; who dictated that letter?—Mr. Edward Gibbon Wakefield.

Mr. Sergeant Cross.—Would your Lordship wish to ask Miss Turner any questions?

Mr. Baron Hullock.—No. (Addressing Mr. Scarlett)—You may now, if you like, call witnesses to show the legality of their marriage, according to the law of Scotland. I must say, from the evidence, that no threat of intimidation, such as would make this a case of force, was used, although it is plain that gross fraud and deception were practised.

Mr. Henry Critchley, examined.—I am the uncle of Miss Turner. I went to Calais to recover my niece. I was in the room during a period when Mr. Grimsditch was not in the room. I had a conversation with Mr. Edward Gibbon Wakefield respecting what he had done. I asked him how he could commit so cruel and flagrant an act as to carry away

a mere child whom he had never seen. He admitted he had never seen her before he got to Manchester, and that he had spent some time at Dr. Davis's, at Macclesfield, where she had been the topic of conversation. She had been represented to him as a very fine girl, with one of the largest fortunes in the county, and that he was determined to have her.

Mr. Scarlett then rose to address the jury for the defence—He said, before I address myself to the facts of the case, there were some circumstances adverted to by my learned brother at the commencement of his address to you, which require from me a particular observation. My learned brother has expressed an opinion that the cause has suffered materially by the absence of a right honourable friend of ours, who conducted the case at the last assizes. Subscribing, as I do, most cordially to the opinion of that right honourable gentleman having distinguished talents, I beg most distinctly to dissent from him, when he asserts that the case has suffered by the absence of that right honourable gentleman ; for I will say, that neither my learned friend (Mr. Sergeant Cross), nor many of my learned friends behind, who were as competent to manage this case as he was, yield to him in experience or capacity. There is another topic.—I will admit, as far as judicial talent is concerned, my learned friend, the late Attorney-General, is entitled to all the praise bestowed on him ; but the general proposition of the learned sergeant, that those are most independent in principle who are independent of all parties, I cannot assent to, for they are ready to depend on all parties, or any that will condescend to select them ; for I must say, and I say it without meaning any injurious reflection, I do not think the worse of a man for being attached to a party, whatever principles they may profess : for as a general proposition, I take it to be no compliment to a professional man to say he is independent of all parties, because the world is too apt to say such a man is open to all parties. So much for the observation of the learned sergeant. And now I shall come to the case at issue, first observing, that no man, either here, or in a court of justice, or in private, will ever find me vindicating immorality. It is my duty to bestow my labours in forwarding, not perverting, the administration of justice ; and if the issue here to-day were, whether Mr. Edward Gibbon Wakefield is justified in what he has done, no man would find me support the affirmative. That he was wrong, all admitted. Mr. Wakefield admitted that he was wrong himself, as appeared from the testimony of the witnesses ; and however the follies of men may induce them to recon-

cile such conduct with proper feeling, in a court of justice it is impossible to palliate it. Though the act, from its nature, cannot be justified, I wish it had not excited so much angry passion on the other side. I, myself, as a father, can make every excuse—every allowance for the angry feelings of a parent at having his daughter taken from him ; but, though excusable, they ought not to be brought into a court of justice. Here the object is justice, not vengeance. Mrs. Frances Wakefield should not, therefore, be mixed up with this transaction, and brought into a court of law to vindicate herself. There is not the slightest pretext for such a proceeding. Why, there are not six ladies in Macclesfield who might not be included in the indictment in the same way ; even the worthy lady who has given evidence, as well may she be included in the conspiracy, for having introduced Mrs. Wakefield at Shrigley ; and as well might Mrs. Wakefield have been indicted for a conspiracy to defraud Mr. Turner of his property, because she was introduced there at her own desire. It is natural, that where a great entertainment was expected, ladies should desire to be present ; but on her visit she asked after Miss Turner. What is more natural than to inquire of mothers about their daughters ? And I venture to say, few visits are made by ladies, in which such inquiries are not made, and particularly when that daughter is an only daughter. But Mrs. Wakefield lent the gentlemen money. It is quite plain they were going somewhere, and wanted money ; but does it follow they communicated their design to Mrs. Wakefield ? There is no evidence of her connexion with this transaction, but the letters which you heard. It would, however, be too much, on mere suspicion, to connect a lady with this charge of conspiracy, who, since her name was mixed up with it, has been the victim of sorrow and wretchedness, and in a state of agitation more severe even than I am sure Mr. Turner could have wished. I wonder that Dr. Davis had not been included in the indictment, because he was the father of Mrs. Wakefield ; but I will make no further observation concerning her, as I have no doubt of your acquitting her. With respect to the other two defendants, if the indictment was merely confined to taking away this young lady from school, and did not contain other counts of an extraordinary nature, I should make no observation on this part of the subject. Further, if my learned friend had not called her as a witness, I should have been glad to be delivered from the necessity of now addressing you ; but I now feel that the offence is attempted to be made of a different character, and that it is material to ascertain whether

the marriage was effected with her consent or by compulsion. God forbid that I should stand up to vindicate any person who in such a case used intimidation or threat to effect his purpose. I have even cautiously abstained from asking Miss Turner any questions which could wound her feelings ; and in this, I am bound to say, I have acted with the concurrence of the defendants. I asked her if she did not believe, till the communication was made to her by her uncles and Mr. Grimsditch, at Calais, that she was the lawful wife of Mr. Wakefield ? she said she did. This, gentlemen, I beg to impress upon your attention, for it was material, as showing a ready and willing consent on the part of Miss Turner. I again repeat, that I do not attempt to justify what has been done. But this young lady having been taken away, was she to go back to her father's house to return to school, or to marry Mr. Wakefield ? It was clear from the evidence, that she was placed under no restraint ; that she might have chosen what she pleased. You, gentlemen, cannot fail to have observed her attractive manner and captivating person, and all that Miss Dolby stated of her quick apprehension ; her sagacity and lively imagination were confirmed by what you have witnessed to-day in her conduct while under examination. When this young lady then, free from all restraint and control, as she was, gave her consent, no man, I think, can doubt that it was a ready and willing consent. If the marriage were in point of fact, illegal, it would be neither the interest nor the duty of Mr. Wakefield to do otherwise than he had done in restoring Miss Turner ; but Mr. Wakefield was no lawyer, and being informed by Mr. Grimsditch that it was illegal, Miss Turner being under sixteen, he acted under that persuasion, but surely no unfavourable inferences could be drawn from his conduct on that occasion. I apprehend, however, and I assure you I express no satisfaction at that, I shall be able to show the marriage was legal, and that Miss Turner gave her uncontrolled consent. It was shown in the evidence, that when they were starting from Manchester, she saw the horses' heads turned towards Oldham, and not the Manchester-road, which was the road to Shrigley. That she was well acquainted with Manchester, and had many friends there, I will prove. I do not mean to call all the witnesses stated in my brief, but a portion shall be examined ; and will shortly state what passed on the way from Manchester to Scotland, and I must add, all these witnesses were examined by the other side, but not called. On the first day it will be found she was full of gaiety and alacrity, and that all along to Gretna-green she



expressed nothing but pleasure and satisfaction, and often to every one who saw her she appeared full of cheerfulness and joy. I will now show you that part of the journey she sat on his knee and appeared very fond of him, and that from the marriage down to the moment of separation, she exhibited alacrity and joy at the event, and fondness for Mr. Wakefield. I will not detail what the witnesses will state, but the substance of their testimony is, that Miss Turner all through manifested every symptom of consent to what had been done ; that from first to last there was nothing like objection, intimidation, or violence, or anything which could lead one to think that Miss Turner was disinclined to accompany Mr. Wakefield ; and you will recollect the intelligence of the girl, who, as you must have observed, has also been exceedingly well grounded in her education. All this I will show, not by one or two witnesses, but a number, between whose evidence there can be no designed connexion. After their coming to London and their arrival at Calais, I will show, particularly in the latter place, that she went to various shops, purchasing articles, leaning on the arm of Mr. Wakefield, and expressed great satisfaction in his society. In fact, that they were, as one of the witnesses states, a loving couple. There is no ground whatever for sustaining the count of feloniously conspiring with force ; and though the first offence cannot be justified, yet the subsequent conduct of Mr. Wakefield, with the ready consent given by Miss Turner, greatly qualifies its character. I remember a case, and so does his lordship, too, the case of Mr. Bacon Frank, but that was inverted in reference to this, for there the father was prosecuted for conspiring to marry a son under age to his daughter. It was tried in Yorkshire, and the circumstance I well recollect. It was proved the son went on his knees to ask his father's consent, but he having refused, the son took up his hat and went to a chaise, in which the father and daughter were waiting for him. The moment the judge heard that the young man consented, he would not allow the case to go further. Here Mr. Wakefield said to Miss Turner, " You may do what you like," and then she gives her consent, which certainly qualifies, if it does not remove altogether the guilt. There is always a conspiracy to marry young ladies under age. By the law of nature a young lady may marry as soon as she is marriageable ; but by the law of this country, if she be under sixteen, and force be used, it is felony ; but one young lady of sixteen is different from another young lady of the same age ; but the law of nature is everywhere the same. I will prove this to be a legal

marriage by the law of Scotland, and indeed by the laws of England, only that it was not published, as is necessary, by banns. Having no interest in the case, beyond what duty urges, I will now leave it in your hands.

Mr. Baron Hullock.—The marriage in Scotland avails nothing. It is of no use whatever to state what occurred after the taking away, at Calais, London, or Penrith. It is impossible you can get over what was done in the first instance. How can you account for the forged letter to Miss Dolby? The fraud was committed there, and what occurred after will not get rid of it, though it may qualify the punishment. It will be my bounden duty to tell the jury the case of fraud and deception is pretty well established by the evidence.

Mr. Scarlett.—There is a a third count with regard to forcibly and feloniously taking away.

Mr. Baron Hullock.—The facts here do not sustain that, and on that, perhaps, there may be an acquittal; but I shall have to make some observations on it.

Mr. R. Wilson was then called; he said—I am the landlord of the hotel at Manchester. When Miss Turner drove up, I showed her up stairs into a private room. She remained about a quarter of an hour. She did not seem dejected. She might have gone where she liked. Her uncle lived in the same street, about two or three hundred yards off. She could have easily sent him a message. They went off to Delph; that's not the road to Macclesfield.

Cross-examined.—I asked the servant his master's name, and he said it was Captain Wilson.

Re-examined.—At hotels, ladies generally wish their own servants to attend them.

John Wilson.—I was a waiter at the Albion, and recollect Miss Turner's arrival. I remarked nothing particular in her manner. She remained about an hour and a half before Mr. Wakefield came. She could have left the house if she pleased. I recollect Edward Wakefield coming. Miss Turner received him as a lady would receive a gentleman. They shook hands. I have not been examined by any body for the prosecution.

Cross-examined.—She seized hold of his hand, and shook it, but did not say, "Oh! how do you do, Captain Wilson?"

Mr. Sergeant Cross.—I wish you may have more witnesses of this sort.

— Steele.—I am a post-boy at the Bell, in Delph. I recollect two gentlemen and a lady and servant coming on the 8th of March. I drove them to Huddersfield. The lady did not appear alarmed.

Was she in good spirits or bad? Witness.—She was doing neither.—(Meaning drinking.)—The lady was talking to the gentleman when driving up to the inn. The girls came and asked, “Are they players you have got?” they were laughing so. “No,” said I, “I suppose it is a wedding.”

Cross-examined.—There was a barouche box between me and the windows, but I walked up a hill, and that is the way I heard them.

This witness appeared to have drank a little before he came into court.

The landlord of the inn at Huddersfield where they drove up, stated, that when they arrived, Mr. Wakefield said, one of the springs was out of order. They stayed about three quarters of an hour, and had tea. I handed her out of the carriage. She came out freely, and leaned upon Mr. Wakefield. She seemed quite at her ease, and like all other ladies.

Charles Croft.—I am a waiter at Huddersfield. I recollect the party coming to our inn. They had tea. Mr. Wakefield made it. They appeared as agreeable as man and wife, or sister and brother. There was no appearance of distress or restraint in the young lady. They did not quarrel or fight.

Mary Brock, a chambermaid at Huddersfield.—I attended on Mrs. Wakefield. She was under no restraint. I don't recollect her slipping on coming down stairs. I handed her into the carriage. I can't say whether she laughed.

Langstaff, the post-boy, who drove them to Halifax, stated, the lady was under no restraint, as far as he saw. When they got into the carriage they were laughing.

Thomas Issott, examined by Mr. Scarlett.—I am waiter at an inn at Halifax. The party arrived before nine. The servant got off the carriage to go into the house, and slept there that night. I was about twenty yards from the carriage, and heard them laughing. The lady did not get out. I knew the lady before, but did not see her that night. She had dined at our house not two months before. They went from Halifax to Keighley.

Richard Mason.—I am post-boy at the White Lion, Halifax. I drove the party to Keighley. It was about half-past nine when we got there. I heard them laughing when I stopped to water the horses. I heard the lady laugh. All the party were in good spirits.

Anne Bradley.—I keep the Devonshire Arms at Skipton. I recollect two gentlemen and a lady coming in a coach and four, about eleven o'clock at night, on the 7th of March. I saw them by the light of a lantern. Four horses were ordered for Settle. I ordered the servant to take some gingerbread, which was laid in the lady's lap. They had also two glasses of water. I said I would be glad to see them on their return, for I rather thought it was a runaway wedding. They were very cheerful, and laughing. The young lady was in good spirits. The gingerbread seemed to please the lady, for she took two plates of it.

Mr. Hartley, the landlord of the Golden Lion, at Settle, stated that the party changed horses, and went on to Kirkby Lonsdale.

Sarah Coleman.—I live at the Rose and Crown at Kirkby Lonsdale. A party came up early on the morning of the 8th March. The lady laughed very much. It was a wet night, but the morning cleared up, and the lady said, "What a beautiful morning we have—we are quite favoured with the morning!"

Mr. Sergeant Cross.—She was cheerful; like a girl going from school to see her father and mother?

Witness.—Yes.

Mr. Scarlett.—Or like a young lady going to be married?

Witness.—Yes, Sir.

Mr. Sergeant Cross.—Are young ladies going to be married always cheerful?

Witness.—No, Sir, that's a serious business.

Mr. Brougham.—I'll venture to say she is not married herself.

The post-boy who drove them to Kendal stated that the young lady walked about very nimbly, and looked very pleasant. She laughed.

Hannah Simpson.—I was chambermaid at the King's Arms, in Kendal. I recollect a party coming up on the 8th of March. They breakfasted. The lady and gentlemen were together in the sitting-room. I saw nothing particular in the lady's conduct. She was only alone in the bed-room for about twenty minutes. I saw nothing particular, but that they were agreeable.

R. Dover, the post-boy who drove them from Kendal to Chap.—I stopped on the road to water the horses. I then heard them talking, for the window was down. I saw them laughing, but did not hear the lady's voice. The lady looked fatigued, as from the journey, and was pale. Though pale, she looked happy.

James Anderson, the post-boy who drove them from Chap to Penrith, said they were laughing, and in good spirits all the way.

William Graham, a postillion at Carlisle.—I drove Mr. Wakefield to Gretna Green. One of the gentlemen got out on the dickey without me perceiving it. The lady and the other remained inside, laughing heartily. I was present at the marriage, and signed my name to the certificate. The lady turned round partly, and saluted the bridegroom in the usual form. The certificate was signed by all the parties.

John Lincoln, the landlord of the inn at Gretna.—I remember the arrival of the Wakefields at Gretna. The lady who was with them remained in a room in my house, whilst the two gentlemen went out. The lady was not at all depressed. I saw the ceremony performed in the usual way. The party dined together at my house, and were all very pleasant. The lady was not at all depressed.

Frances Lincoln.—I am the sister of last witness. I remember the Wakefields and Miss Turner. Miss Turner went up stairs linked in Mr. Wakefield's arm. She sat upon his knee in the room.

David Lang (the priest of Hymen of Gretna Green) called, amidst the buz of the Court.

You live at Springfield, near Gretna?—I do.

Do you remember being sent for to a party last March?—I do.

What did the gentleman say to you?—Witness. What did he treat me to, do you say? (Loud laughter was excited by this very natural blunder of the hard-of-hearing and whisky-loving old gentleman.)

What did he wish you to do?—Why, to do that which I have done for many others; to join hands, and so on.

Did you make a bargain to do so?—I did.

Was the bride quite agreeable?—O, quite. The lady wrote her name, and the gentleman wrote down his name. They were both very agreeable to join hands, and at the end they both embraced one another. I asked the lady for a present of a pair of gloves, and I received them from her own hand. Mr. Wakefield gave her 20s. to give to me, which she did. After the ceremony was over, Mr. Wakefield asked what wine there was in the house. I told him, and he said he would have some champagne.

Did he give you any?—Oh! yes (with a peculiar glee, which made the whole auditory join in a burst of laughter). The gentleman and lady both seemed to be in good spirits.

Mr. Brougham.—Mr. Wakefield did give me some money as well as the champagne. I cannot say exactly how much. It might be about £20 or £30.

Mr. Brougham.—Or perhaps £40.—The witness, with a peculiar gesture, said he did not keep accounts so nicely as to speak to a few pounds. (Much laughter.)

[The Gretna Green certificate of the marriage was then put in and read.]

The witness was then re-called, and examined by Mr. Park.—The marriage ceremony was in the ordinary form. It was in the old form of Scotland—the ordinary form of the Church of Scotland.

Mr. Brougham.—What do you mean, man, by the ordinary form of the Church of Scotland, when it had nothing to do with the Church? Are you a clergyman?—Witness.—No.

Of what trade are you?—No trade.

Why, are you not an ostler?—Are *you* an ostler? (Much laughter.) How long have you lived where you do now, at Gretna?—Forty-five years.

What did you do before that?—I was a poor man.

What did you do when you were a poor man?—Whatever I could to get my bread.

What occupation did you follow?—Several.

Name some one of them.—I was a merchant.

What sort of a merchant—a Scots pedlar, was it?—Yes.

What do you mean by the ordinary form of the Church of Scotland? I ask you again, is it not usual in Scotland for parties to be married by a clergyman?—Yes; but many are not.

Is it not the more common course of the parties wanting to get married, to go before a clergyman?—I do not know; many do so.

Is not that the regular mode of marrying?—Yes, it is, in a church.

By Mr. Scarlett.—What, then, is yours an irregular mode?—No.

What form of words do you use?—If you come before me, I will tell you.

Why, man, I don't want to get married! (Much laughter.) Tell me what you said.—I asked them whether they acknowledged each other for man and wife; they said they did. I then declared them to be man and wife before three witnesses.

Mr. Baron Hullock.—I must say, I do not like this marriage.

M. Guillac, keeper of the hotel at Calais, deposing through an interpreter—said he had known the defendants for some years. Mr. Edward Gibbon Wakefield introduced a lady to him as his wife in her hearing. She was close to him. They passed some days at his house as man and wife. She went by the name of Madame Wakefield. They treated each other as man and wife. They occupied a saloon and two bed-rooms; there were beds in each room; the bed-rooms communicated with the saloon, and by an internal communication with each other. It is not unusual for married people to lodge in that way. A plan was shown to the witness, which he said represented the position of these rooms. She walked out often with him, and went to the play with him. Has seen them at breakfast together.

Mr. Duncan M'Neil, sworn.—I have been a writer to the signet upwards of eleven years. I am Sheriff-depute of Perthshire. I am acquainted with the law of Scotland relating to contracts of marriage. I have heard the examinations of the witnesses here to-day. From what I have heard here of the proceedings at Gretna, it is my opinion that, in themselves, they constituted a valid marriage, and I have not heard any thing to take from me that opinion.

Cross-examined.—As a Scots lawyer, it is my opinion that, taken by themselves, the proceedings at Gretna constitute a valid marriage. There was formerly considerable doubt on the subject in Scotland; but it was considered as settled by the decision in Dalrymple's case. I am aware that three of the present judges of Scotland have sworn it to be their opinion that such marriage is not valid.

Mr. Brougham.—Do you not know whenever the law of Scotland is not precise, the civil or Roman law is referred to?—Witness. Yes, I do.

Mr. Brougham.—Do you know that it is a general principle of the Roman laws, that any contract in which the consent was the effect of fraud, fear, or *dolus malus*, was null and void, and not enforced by the Prætor?—Witness. I do.

Mr. Brougham.—Do you know that there is an edict of Justinian, commonly called a *novella*, by which the carrying away and marrying a female by deception is a capital crime?—Witness. I think there is such an edict.

The cross-examination of this witness was very judiciously entrusted

to Mr. Brougham, and that learned gentleman displayed, in the course of it, an extraordinary knowledge of Scotch law, and of the principles and practice of the jurisprudence of different countries, in regard to the law of marriage, of property connected with that ceremony, and of crimes that may be contingent upon the practice of any fraud, or upon any breach of the law. He conducted the cross-examination with great good temper and ingenuity.

Mr. Sergeant Cross, in replying, expressed his amazement and indignation at the course which the defendants had thought proper to pursue. They had the baseness and hardihood to make an insinuation in direct opposition to the whole evidence which had been given, which evidence clearly proved that the young lady had always separate rooms. And although this inuendo would have no effect upon the verdict, it would, he hoped, recoil upon the criminals when brought up for judgment. It would not be necessary for him to advert to the evidence against the two Wakefields, whose very defence was, that they had committed the crime with which they were charged ; but he thought it necessary to make some remarks upon the testimony against Mrs. Wakefield, whose participation in the crime was shown by a chain of evidence. Her going to Paris, and her connexion with the other defendants there—the time and circumstances of her return ; indeed, all the circumstances left no doubt that Mrs. Wakefield was fully aware that the object of Edward Gibbon Wakefield and his brother was to carry off Miss Turner clandestinely. By the letter which she wrote, stating that Mr. Turner had not arrived on the night of their departure, and that Miss Dolby had not as yet written to Shrigley, it was quite clear that she was aware of all their proceedings. She kept up a continual secret correspondence with two of the confederates after the commission of the act. He would ask the jury if her letter to Mr. Randall of Pall-mall was that of an innocent person, or if it did not bear upon the face of it conviction as to the guilt of the author ? She had furnished means, by money, to carry on the enterprise. Upon the whole, he thought it was impossible to draw any other conclusion from the evidence than that Mrs. Wakefield was guilty. This, however, he would leave to the consideration of the jury ; and even if they could draw a contrary inference, he was still bound to regard it as their conscientious verdict. With these observations he would leave the case of all the defendants in their hands.



His lordship then proceeded to charge the jury. If the jury entertained any doubt as to the guilt of any of the parties, it was competent for them to return a verdict of not guilty as to one, and find the rest guilty. As to the guilt of Edward Gibbon and William Wakefield, there could be little doubt upon the mind of any man who had attended to the evidence; but the case as regarded Mrs. Wakefield stood altogether upon a different footing. It might be said that Mrs. Wakefield had co-operated, and it might also be that she did so without knowing the purpose which her step-son had in view. As to her letters to Mr. Randall and her conduct subsequent to the transaction, she might have acted thus, and yet feel the utmost abhorrence and indignation at the whole business. Her relationship to the defendants might naturally enough induce her, although disapproving of their conduct, to exert herself to enable them to elude the punishment with which the law would visit their offence. As to the defendants, Edward and William Wakefield, it was impossible to conceive any other object they could have throughout the business, than to get, through her, at the property of the father. Edward Gibbon Wakefield had avowed his intention, at all events, to have her; and William Wakefield was implicated by the misrepresentations he had made to Miss Turner, at Carlisle, as to her father's difficulties, and his attempt to escape from the bailiffs. He had but one more observation to make respecting Mrs. Wakefield. He thought some more facts were necessary to warrant the inference of her being a party to the conspiracy, or the jury could hardly convict her as a party concerned. His lordship was about to proceed regularly to comment on the evidence, when he was informed by the jury that it was quite unnecessary to go any further.

At the suggestion of the counsel for the defendants, it was agreed that a verdict of not guilty should be taken on the third count.

The jury consulted a few minutes in the box, after which they asked permission to retire to consider their verdict.

His lordship said, that if they had any doubt as to their verdict, he would proceed to a close with his observations.

The Foreman replied, that it was only with respect to the female defendant that they were in doubt, and that it was, therefore, quite unnecessary.

The jury then retired at twenty minutes before eight o'clock, and

after an hour's absence, returned a verdict of guilty against the three defendants, Edward Gibbon, William, and Frances Wakefield.

The verdict was received with strong marks of approbation by the court.

Mr. Baron Hullock asked Mr. Sergeant Cross what he intended to do with the second indictment?

Mr. Sergeant Cross replied, that he was not then prepared to give an answer to the question; but if his lordship would allow him until nine o'clock in the morning, he would then determine as to the course he should adopt.

Mr. Baron Hullock was by no means desirous of hurrying him in his decision. The morning would be quite time enough.

The court then adjourned.

On the following day, Mr. Sergeant Cross brought forward the other indictment, which charged Edward Gibbon Wakefield and William Wakefield, with taking away, by fraud and force, Ellen Turner, and marrying her to the defendant, Edward Gibbon Wakefield.

Mr. Scarlett said, he had a good defence to all the counts in the indictment, except the fifth; but after what had passed yesterday, he did not wish to occupy the time of the court unnecessarily; he would consent to withdraw the plea of not guilty, and submit to a verdict against the defendants on that count.

Mr. Sergeant Cross acquiesced in the suggestion, and the jury found the defendants guilty on the fifth count, and acquitted them upon the others. The learned Sergeant wished it to be distinctly understood that no compromise had been entered into by Mr. Turner.

Mr. Sergeant Cross moved for the committal of Edward Gibbon Wakefield and William Wakefield.

Mr. Baron Hullock.—Let the defendants be committed.

They were then taken into custody by Mr. Higgin, and retired out of court.

On the 14th May following, Edward Gibbon, and William Wakefield were brought up for judgment to the Court of King's Bench, at Westminster: the former was sentenced to three years' imprisonment in Newgate, and the latter to the same term of imprisonment in Lancaster Castle. Mrs. Frances Wakefield, at the desire of Mr. Turner was not brought up for judgment.

It is only fair to mention that in their subsequent career the two Messrs. Wakefield have done much to remove the stain of this sad transaction. They have ever since acted as industrious, intelligent, and honourable men, and on some occasions they have rendered essential service to their country at home and abroad. The younger, Mr. William Wakefield, served with great distinction as a cavalry officer in the late civil wars of Portugal and Spain, and obtained the rank of Colonel there. He was subsequently appointed Governor of the New Zealand Company, and for many years conducted the affairs of that Company in New Zealand with eminent credit and ability. He died at Wellington, on the 19th September 1848. He had married, the 26th March, 1826, Emily Elizabeth, only daughter of the late Sir John Shelley Sidney, Bart. This lady died the 12th August, 1827. Colonel Wakefield's only daughter is the wife of Edward W. Stafford, Esq., of Mayne, in the county of Louth, Ireland.

The victim of the affair, Miss Turner, whose marriage with Wakefield was dissolved by act of Parliament, was afterwards married, the 14th January, 1829, to Thomas Legh, Esq. of Lyme Park, Cheshire, and died in 1831, in giving birth to her first and only child, Ellen Jane, the present heiress-presumptive of the great possessions and honoured name of the Leghs of Lyme.

## THE VIOLENT ARREST OF THOMAS SWYMMER CHAMPNEYS, ESQ.

THE trial, which arose upon this unjustifiable act of violence, took place at the Wilts Summer Assizes, in 1820, before Sir James Burrough, one of the Judges of the Court of Common Pleas. The plaintiff in the case was Thomas Swymmer Champneys, Esq., only son of Sir Thomas Champneys, Bart., of Orchardleigh, near Frome, in the county of Somerset; and the defendants were Nathaniel Messiter, a wool stapler and banker at Frome, and his two sons, George Messiter, an attorney, also of Frome, and John Messiter, a wool-comber, of the same place. The action was for assault and false imprisonment, and the damages were laid at £5,000.

It appeared from the evidence, that the plaintiff, who had long been a man of the first fashion in the county, who was a magistrate, and who had once been a man of opulence, had, by a course of imprudence, become involved in a most distressing state of embarrassment. Upon an arrest for nearly £1,000 the defendant Nathaniel Messiter, together with a Mr. Chislett, became bail for the plaintiff, and it was upon the surrendering of the plaintiff by the defendant Nathaniel Messiter, that the cause of action arose. Mr. Champneys, to avoid being taken into execution upon two writs of *capias ad satisfaciendum*, had on the 23rd February 1820, left Orchardleigh-house, in Somersetshire, and went to the Black Dog Inn, at Standerwick Common, in Wiltshire. On the 24th the defendant, George Messiter, the attorney, made his appearance at the Black Dog, and not waiting for any announcement, followed the servant into the room where Mr. Champneys was, by whom he was received with great

civility. In a short time after, the defendant, Nathaniel Messiter, also came, and, as the servant of Mr. Champneys deposed, entered the room with some violence, to lay hold of the plaintiff. Mr. Champneys, hopeless of succour, made up his mind to the surrender, it being understood that he was to be taken directly to London, through Warminster, in order to be delivered to the custody of the Marshal of the King's Bench; but he expressed a great reluctance to be taken into any part of the county of Somerset, alleging, as a reason, his knowledge of the two writs of *ca. sa.* being out against him. In order to alleviate the plaintiff's fears upon that head, Mr. George Messiter produced the two writs in question out of his pocket, and, declaring they had never been out of his own possession, "vowed to God that they should not be executed." Aware that he had no alternative, the plaintiff made up his mind to proceed to London, but requested that he might have the meal which had been prepared for him. This was denied; but the plaintiff at the same time was informed, that he could have every refreshment at the Angel Inn, at Warminster.

On the same morning the attendance of Mr. Williamson and his son-in-law, Mr. Ivy, bailiffs, had been clandestinely sent for, to the Black Dog, and they accordingly came there, and the writs of *ca. sa.* were put into the hands of Williamson, with a promise that the plaintiff, as soon as he was brought within the county of Somerset, should be delivered into his hands.

Under these circumstances, Mr. Champneys entered a chaise, which had been procured from Frome, that chaise having the additional accommodation of a dickey-box; the chaise having been sent for after the arrival of the Messiters at the Black Dog, and the driver having been told on his arrival to set his horses' heads towards Warminster, but as soon as Mr. Champneys was secured, to drive as hard as possible for two miles on the Frome road. Mr. Champneys was accompanied in the carriage by Mr. Ivy, the sheriff's officer; Mr. George Messiter, the attorney, mounted the dickey-box; Mr. John Messiter performed the office of footman by getting behind; and Mr. Nathaniel Messiter that of out-rider on horseback. In this way all was proceeding quietly, until the horses were turned round to the Frome road, and then the plaintiff seeing how he had been deceived, put his hand upon George Messiter's shoulder, and said "You traitor you have entrapped and deceived me: how can I take your word again as a gentleman?" The plaintiff then became uneasy, and entreated George Messiter to return; but his entreaty met with no other

reply than the appearance of an unsheathed dagger, and a threat of applying its powers. Maddened, the plaintiff reached across to the door next to the bailiff, and in so doing, his foot being put against the seat of his gig-box, forced open the door on the opposite side, the box itself falling out. The next state in which the plaintiff was found was that of being half out of the carriage, exclaiming "Murder!" the horses being in full gallop: and in this way he was dragged till the cries of the bailiff, who did not loose his hold, added to those of the plaintiff, caused the carriage at length to stop. When it had done so, the bailiff loosened his fingers, and the plaintiff fell to the ground, being immediately seized by John and George Messiter; and in a few moments after, the defendant, Nathaniel Messiter, the father, rode back, and, without provocation, struck the plaintiff a violent blow with a black thorn cudgel on his head, which fortunately only demolished the hat. Force was then offered to be used to drag the plaintiff once more to the carriage, but he absolutely refused, unless his box, in which was a gold watch, and £50 in cash, was given to him. This the defendant, Nathaniel Messiter, refused, crying, "Drag him along, the scoundrel; drag him along; I have pistols, and I will use them." The more humane bailiff advised Mr. Champneys to get into the carriage again, upon the former promising that the box should be restored. The plaintiff again got in, and was fixed between Mr. Ivy, the bailiff, and John Messiter, who was promoted from the foot-board; and in this way the party travelled till they got about half a mile within the verge of the county of Somerset, when they were met by Williamson, who accosted them by inquiring if "'Squire Champney's was in the carriage?" "Oh, yes," said George Messiter, "he is here." Mr. Williamson then proceeded to take the plaintiff in execution upon the very writs which George Messiter had vowed to God should not be executed.

Mr. Justice Burrough addressed the jury, who, after about ten minutes consultation, returned a verdict for the plaintiff.—Damages, £700.

Mr. Champneys succeeded to his father's baronetcy the following year, the 2nd of July, 1821. He had, in 1800, served the office of High Sheriff of Somersetshire; and in 1803, on a threat of invasion from the French, he had raised a body of three hundred volunteers, which bore the title of the Selwood Forest Legion, he being the Lieutenant-Colonel Commandant. He married Charlotte Margaret, second daughter of Sir Roger Mostyn, Bart., but as he died without issue, his baronetcy became extinct.

## THE CASE OF SERGISON AGAINST SERGISON.

This was an issue directed by the Lord Chancellor Eldon, in order to try whether the plaintiff, Eliza Ann Harriet Sergison, was the daughter of the late Colonel Francis Sergison, or whether she was a supposititious child imposed upon the family by the contrivance of the Colonel's wife. The trial took place in the Court of King's Bench, the 11th July, 1820.

The Solicitor-General, Sir John Singleton Copley, opened the plaintiff's case. It appeared from the learned gentleman's statement, that Colonel Francis Sergison was the younger son of a considerable family in the county of Sussex; and that, in the year 1806, having dissipated the greater part of his fortune, and being upon half-pay, he went to reside in Dublin. Being there unfortunately thrown into 'gaol for debt, he became acquainted with a widow named Cronin, who from a similar cause, was placed in the same situation; and he almost immediately married her. The wedding took place within the walls of the prison, Mrs. Sergison, the Colonel's first wife, having died only a few weeks previous to the ceremony. After their liberation from confinement, Colonel Sergison and his new wife were for some time in circumstances of pecuniary difficulty, and dwelt in different parts of Dublin; and on the 30th of January, 1807, at the house of a person named Ging, in that city, the child was said to have been born, whose rights were to be determined by the present proceeding. In the year 1808, Colonel Sergison came to reside in England; and in 1811, by the death of his brother, Mr. Wardell Sergison, he became entitled to an estate for life, in a considerable property at Cuckfield, in Sussex, upon which he lived up to the period of his death, which took place in the year 1812. During the life

of Colonel Sergison the present plaintiff had always been acknowledged and treated as his daughter; by the death of his mother she became entitled to an adequate fortune; and her right to that fortune and the name of her father was now disputed by a gentleman of the name of Pritchard, who had married Colonel Sergison's sister, and who, becoming by that marriage possessed of estates to the amount of £8,000 a year, had taken upon himself the name of the family. The learned counsel, after producing certain letters in which Colonel Sergison had spoken of the plaintiff as his daughter, and expressed the warmest affection for her, next proceeded to state the case, as he understood it, relied upon by the defendant. The assertion was, that the pregnancy of Mrs. Sergison had been a fraud upon her husband, and that by the assistance of a woman called Nelly Cunningham, of another woman named Gibson, and of an accoucheur of the name of Fitzsimmons, she had procured the child of Ann Magin, and palmed it upon Colonel Sergison as her own offspring.

The evidence for the plaintiff was as follows:—

Benjamin Collins said, that in the year 1807 Colonel and Mrs. Sergison lodged in his house near Ballybough-bridge, Dublin. At that time Mrs. Sergison was enceinte. They went away for a short time, and lodged at the house of a person named Ging. On their return they brought an infant with them, which was treated as their child.

On cross-examination the witness stated, that Colonel and Mrs. Sergison had a servant called Nelly Cunningham; and that a woman named Kitty Evers came backwards and forwards. Colonel Sergison saw but little company; he was passionate and addicted to liquor.

Honor Carey washed for Mrs. Sergison when she first lived at the house of the witness Collins. Remembered her living in the house of Ging; she was in the family way at that time. Was going to Ging's with some linen on a Friday in June, 1807, when she met Kitty Evers; and in consequence of what Kitty said to her, went directly to Mrs. Sergison. She found that that lady had been taken ill. An old woman was sitting by the fire, and no one else was present. Evers soon returned, bringing a doctor; the doctor was an old man. Witness stayed until a female child was born. It was not a full-grown child, but seemed to have come before its time. No nurse was provided, or baby-linen ready. Witness saw the child before it was washed. She was then the mother of several children, and could have no doubt that the child in question was the child of Mrs. Sergison.



In the course of a very long and trying cross-examination by Mr. Scarlett (the late Lord Abinger), the witness said that she now resided in Liverpool. She had never seen Mrs. Sergison from the time she left Mr. Ging's house to the present time. She had received a letter last year, from Mrs. Sergison, and had answered it to Mr. Cocker, the attorney. She knew a man named Lary M'Mahon, but had never conversed with him as to the affairs of Mrs. Sergison. She knew that in 1807 Mrs. Sergison had a child at nurse in Drumcondra; the child was named John. The witness gave her evidence with the greatest possible firmness and consistency, and spoke to the circumstances of the lying-in in terms which precluded every supposition of her being mistaken.

Mary Ging said, that in 1807, she resided in Parliament-street, Dublin. Colonel and Mrs. Sergison lodged in her house. Mrs. Sergison was confined at her house, but she (the witness) was not present upon the occasion.

Rose M'Carey saw Mrs. Sergison while she lived in the house of Collins, and thought she was enceinte at the time.

Mary Morland remembered seeing Mrs. Sergison at Ging's house the day after her lying-in. The child was remarkably small and puny. For some months previous Mrs. Sergison had appeared to witness to be in the family way.

Mrs. A. Sergison, the self-alleged mother of the plaintiff, a fine looking woman, swore that she was married in April, 1806, to the late Colonel Sergison. In June, 1807, she was delivered of a female child, who was the present plaintiff, Eliza Ann Harriet Sergison. She lay-in at the house of Ging, 22, Parliament-street. She did not go her full time, in consequence of a fright which she suffered. The child was small, and scarcely expected to live. At the time when she was taken ill, Colonel Sergison was gone to visit a child of hers who lay ill at Drumcondra. Fitzsimmons was the name of the accoucheur who attended her. Honor Carey, Mrs. Gibson, and Kitty Evers, were present. Colonel Sergison came home after the child was born, and from that hour to the time of his death, he acknowledged it was his. Previous to her marriage with Colonel Sergison she had been the wife of a man named Cronin; and, after Cronin's death, had two illegitimate children before she saw Colonel Sergison. Nelly Cunningham, her servant, was in the secret as to those children. After Nelly left her service, she allowed her an annuity of £12 a-year.

Cross-examined by Mr. Scarlett.—One of the illegitimate children was called John and the other James. James was born on the 18th March, 1806, and she married Colonel Sergison on the 30th April, 1806. She was carried to prison only a fortnight after the birth of James, but Colonel Sergison's first wife was buried before she went to prison. Mrs. Sergison was then cross-examined as to her conduct since the commencement of the present proceedings, and swore positively, that since that period she had only passed forty-eight hours in Dublin—that she had never gone by the name of Smith—that she had never tampered with any of the witnesses in the cause—that she had never authorised Larry M'Mahon to interfere in her affairs, or make proposals to witnesses on her account—and that she had never intended to go to America, nor expressed any such intention.

This was the evidence on the part of the plaintiff.

Mr. Scarlett, on the part of the defendant, stated to the jury that the learned counsel who appeared for the plaintiff was not aware of the case which he supported. The lady who had sworn so firmly before the court, had perjured herself in every word which she had uttered. The learned counsel then produced and read a number of letters, which were sworn to be the hand-writing of Mrs. Sergison. In one of these epistles Mrs. Sergison implored Mrs. Gibson to furnish her with the means of going to America, in order to delay the coming on of the present trial. In a second letter to Larry M'Mahon, she thanked him for his agency, and directed him to make a bargain with Kitty Evers, one of the witnesses against her, to go out of the way at the time of the trial, and accept an annuity as a reward. She desired him also to go to Fitzsimmons, the accoucheur, and bid for his evidence, promising that money should immediately be sent to fulfil these engagements: a proposal of the same nature was to be made to Mrs. Gibson. In another letter to the same man she told him that she had purchased Kitty Evers, and sent money to bring her to London. She desired, however, that he would direct Kitty to meet her at a certain place in London, that she might communicate with her unknown to the attorney in the case. In several other letters Mrs. Sergison not only settled the evidence which Evers and other witnesses should give upon the trial, but arranged the manner in which her own attorney was to be deceived as to the measures she was taking. Mr. Scarlett concluded by relating to the jury the circumstances which were afterwards detailed by his witnesses, as follow:—

Mrs. Gibson had known Mrs. Sergison twenty years. When she first knew her she was the wife of Cronin, a journeyman coachmaker. Remembered her marriage with Colonel Sergison, and her living afterwards in Parliament-street. About that time Mrs. Sergison came to witness, and said she had supposed herself *enceinte*, but found she had been mistaken; that she dreaded the colonel's violence when he should discover his disappointment; and that she had formed a plan for imposing a supposititious child upon him. She added, that she and her servant, Nelly Cunningham, had laid their heads together, and had found a child at a house in Sycamore-alley. Witness then went with Mrs. Sergison to a house, 29, Angier-street, where she saw Nelly Cunningham with the child. Mr. Fitzsimmons was sent for, and had a conversation with Mrs. Sergison. The child was then taken in a coach, by witness and Mrs. Sergison, to her lodgings in Parliament-street. Witness carried it up stairs in her muff; something had been given it to make it sleep. In about half an hour Fitzsimmons came. Mrs. Sergison went to bed, and the child was laid on the bed by her. Witness knew no such person as Honor Carey; saw no such person. In July last (1819), witness received a note in Dublin, saying, that Mrs. Smith wished to see her at the Packet-house; she went, and found Mrs. Sergison and her supposed daughter. Mrs. Sergison said, that she had come to see whether witness had really sworn against her. Witness said she had told the truth. Witness blamed Mrs. Sergison for bringing the child, and said, that the real mother was then selling apples at the corner of the next street. Mrs. Sergison left Dublin. Witness afterwards received a letter from her, requesting she would receive some money in Dublin, and transmit it, in order that she might be enabled to go to America.

Charles Fitzsimmons was a surgeon and man-midwife in Dublin, and attended Mrs. Sergison twice with children before she was married to Colonel Sergison. The witness then corroborated in all material points the evidence of Mrs. Gibson. He saw no such woman as Honor Carey. Larry M'Mahon came to him in Dublin, to know how much he would take to quash his testimony.

Ann Magin, the woman claiming to be the mother of the plaintiff, said that her maiden name was Higgins. In 1807 she lived servant at a public-house in Sycamore-alley, Dublin, kept by Barney Carr. She was delivered of a child in that house; and, four days after, went to lodge at Mrs. Burn's, opposite. When she had been a few days with Mrs. Burn,

an old woman came and asked if there was not a girl there who had lately been brought to bed. Witness said that she had. The old woman then told witness that she came from her mother to take away the child. Witness was loth to let it go, because she thought they wanted to put it in the poor-house. The old woman took out a book, and swore it should not go to the poor-house, and told witness that her mother would never look on her again if she did not give up the child. Mrs. Burn asked witness how she meant to maintain it; at last witness gave it up, and the old woman took it away. She never saw her child since until the last summer, or the old woman until the same time. As soon as she did see the old woman, who was Nelly Cunningham, she knew her for the woman who had taken her child.

Mary Burn corroborated the testimony of the last witness.

A number of letters were then put in, written by Mrs. Sergison at different times to Nelly Cunningham, who was since dead, with a view to show that Nelly was acquainted with the secret of Miss Sergison's real birth and extraction; and that she received an annuity as the price of her silence.

The Solicitor-General, in reply, contended, that a case had not been made out by the other side; and that his client ought not to be prejudiced by the foolish and unjustifiable conduct of her mother.

The Lord Chief-Justice Lord Tenderden summed up the evidence, and the jury, after retiring for a few minutes, returned a verdict for the defendant.

A short time afterwards a motion was made regarding this affair in the Court of Chancery by Mr. Wingfield in the following terms:—"In this case," said the learned counsel, "which came before you some time back, the court directed an issue to try the question, as to whether the infant, Miss Sergison, was the daughter of the late Colonel Sergison. The young lady is the defendant in this suit: the action has been tried, and a verdict given against Miss Sergison; but it is our intention on her behalf, to move for a new trial; and what we wish is, that the application for a new trial should stand over till the next term; and that, in the meantime, the allowances which have been made for the education and maintenance of the infant (Miss Sergison) should be continued, the trustees undertaking to become responsible for the sums that may be so advanced in case the application for a new trial should prove unsuccessful. It is our duty to apprise your lordship, at this period, of our pur-

pose, that no interruption whatever should take place in the appropriation for the objects I have mentioned."

Mr. Hart, counsel for the plaintiff.—"If either of the trustees will undertake to be responsible for the sums so advanced, I cannot object to it. The evidence on which the jury found their verdict established clearly, that the defendant was not the child of the late Colonel Sergison."

The Lord Chancellor.—"Let the motion for a new trial stand over till the first day in next term. In the mean time the allowances for the maintenance and education of the infant to be continued, the trustee undertaking to be responsible for such advances."

## THE TRIAL OF CAPTAIN MOIR.

THIS unfortunate person, whose fate marks the stern and even-handed justice of the English law, was a gentleman of high descent, birth, and connections. He was the son of William Moir, Esq., of New Grove, Forfarshire, and he was born there in 1794. He was first cousin to Sir William Rae, Bart., of Eskgrove, at the time of this trial, Lord Advocate of Scotland; and his eldest sister, Miss Wortley Cornelia Moir, was married in 1827 to Colonel Sir James Gardiner Baird, Bart., a near relative of the gallant Sir David Baird. Captain Moir had himself, at the age of nineteen, entered the British army; and during a period of seventeen years had served with great credit in the 14th and 37th regiments of foot, in France, Spain, and America. While in America, in 1816, he fell in love with, and married, a lady of exceedingly amiable disposition, then only in her fifteenth year; and on his return to England he resided with her in the vicinity of London. Here he became acquainted with many families of high standing in society; but, tired of an idle life, he determined to devote his time to the occupation of farming, and at Michaelmas 1829 he entered on the possession of Shellhaven Farm, consisting of about four hundred acres of land, and situated near Stanford-le-Hope, in the vicinity of Barking, in Essex. At this time he had three children, respectively of the ages of twelve, ten, and seven years, and there appeared every prospect of a continuance of that happiness which he had so long enjoyed with his family, when he was utterly undone by the violent act which he committed—an act attribut-

able rather to passion or insanity than to preconceived deliberation : he consequently subjected himself to the infliction of the severest penalty of the law.

It would appear that Captain Moir was in the habit of pursuing a strict line of discipline with regard to trespassers upon his farm, and was considerably annoyed by the constant appearance of fishermen upon his lands, who resorted thither for the purpose of dragging a portion of the river which passed through his property, and which was supposed to contain an abundance of fish of a superior quality and size. His endeavours to prevent these invasions of his rights brought on quarrelling between him and the men, which rose to such a height that Captain Moir was misled by his wrathful feelings to the unwarrantable extent of shooting one of them. This he no doubt did in a state of irritation, but without what amounted to sufficient legal provocation. His anger, too, had time and opportunity to cool ; the law, therefore, properly held the deed to be murder ; and, however one may lament the calamitous consequences which ensued, one cannot but admit the rightfulness of the judgment which was executed on this unhappy gentleman. His victim, a poor fisherman, named Malcolm, died of the wounds which he received, and Captain Moir was tried for the murder at the Summer Assizes of 1830, at Chelmsford, before the Lord Chief Justice, Lord Tenterden.

The indictment charged William Moir with the wilful murder of William Malcolm, at Stanford-le-Hope, on the 17th of March, 1830, by firing a pistol loaded with ball at him. The prisoner pleaded " Not guilty."

The evidence was as follows :—

William Dukes is a fisherman, living in Wandsworth, Surrey. Knew William Malcolm for seven years, and was in his employment. One day in March last he went with the deceased to Holy-haven, which is on the Essex side of the river, five miles below Gravesend, in a boat ; an apprentice of Malcolm's was with them. Left him in the boat, and witness and Malcolm went to Shelhaven creek, which is half a mile from where the boat was left. They crossed the marsh by a foot-path. When they had arrived at the creek, they proceeded to put down nets, when Captain Moir and his servant came up. The former said, " What do you do here ?" Deceased replied, " We have a right to lay a net here." The Captain said, " If you do not take it up, I will cut it all to pieces." Malcolm replied, " Don't cut it, and I will take it up." Captain Moir said,

with an oath, that if he was a man, he would give him a good thrashing. Malcolm pulled off his jacket, and told him to do it if he could. Prisoner called Malcolm some opprobrious name. They then parted, the net having been taken up. This was at half-past twelve in the day. Malcolm and witness then went to Mrs. Baker's cottage, where they stayed about an hour and a half, after which they set out for Borley-house. They went by the same way they came. Malcolm walked first, having a long pole on his right shoulder, and a basket on his left arm ; he had gone about a hundred yards from Mrs. Baker's cottage, when Captain Moir came up on horseback, from the direction of his farm. The latter said, " I thought I told you not to walk across my field ;" to which Malcolm said, " I will go." Moir directly fired a pistol ; he was about seven yards off when he fired ; upon this, Malcolm said, " You have broke my arm, you have broke my arm." Moir said, " I will send a doctor for you ;" and said to witness, " If you do not go off my premises, I will serve you the same ;" on which witness went back, assisting Malcolm to the cottage of Mrs. Baker. Moir rode away. Witness and Mrs. Baker got some flour, and other things, and did their best to stop the blood. In about three quarters of an hour Mr. Dodd came, after which witness went to the boat, and afterwards went back to the cottage. In the evening Malcolm was taken to Stanford-le-Hope, in Captain Moir's cart.

Cross-examined.—There was no aggravating language ; had never said there was. Before parting, Moir told Malcolm he should go round by the sea wall, which is longer than by the marsh. Was about ten yards off Malcolm when the pistol was fired. Never said he was forty yards. When master went across the marshes back, he never said that he did not care a d—n for the captain. Witness had never said he did. Was sure master never said he took the pole to defend himself. Never said so to Mr. Liddle.

Re-examined.—When Mr. Moir rode round, Malcolm never moved the pole.

William Raven.—On the 17th of March last was in the employment of the prisoner, who occupied Shelhaven farm. In the middle of that day, witness went with him to Shelhaven-creek, which is about six rods from the house. When they got there, they saw a man and lad placing nets across the creek. Prisoner bade them take them up. Deceased said he would fish in spite of them. He was told again to take up the nets,



and deceased replied, he would be d—d if he would. Prisoner said, he would cut it, and he (Malcolm) said, with another oath, "I will take it up," and did so. The Captain asked for his name, which Malcolm would not give. Mr. Moir said, he should know his face again. The deceased answered, "and so shall I your's." Malcolm added, "I shall think of you another day." Moir replied, "Give me no more of your sauce, or I shall help you off." Witness and his master were then going away, when Malcolm called him a cowardly Scotchman, "or you would have hit me." Moir told him to go by the wall. Malcolm said he would do so. Prisoner told him not to set his foot on his ground any more at his peril. Malcolm and the lad went towards the cottage. Witness and Captain Moir went home. The latter went into the house—witness into the yard about his work. After a little he came to witness to get his horse out, which witness did. The Captain rode across the marshes to the men, who were walking along the marsh. Witness saw his master ride before them, and wave his hand. The man still went towards him. He then went a little bit further. The man rushed to him with the pole on his shoulder. Master then fired a pistol, when the man dropped the pole, and went towards the cottage. Witness was about sixty yards off. In the evening, witness in his master's cart went with the deceased to Stanford-le-Hope.

Cross-examined by Mr. Gurney.—Had seen his master with pistols before in his pocket. The horse had been saddled some time before his master wanted it. He seemed in a hurry, and galloped off directly. The pole the man had came about the height of his master's body. Could not tell the distance between them; there was a pond behind his master, and the pony's heels were close to the pond. Master seemed in a great passion when he called for the horse.

William Grub, a labourer.—On the 17th of March saw Malcolm and Dukes in the marshes on the path; somebody came up on horseback, turned round, shot the man, and went back again. Malcolm had a pole; did not see him move the pole before the pistol was fired; when it was fired he dropped the pole.

Mr. James Barrow Dodd.—Is a surgeon at Stanford-le-Hope. On Wednesday, the 17th of March, he was called in to see Malcolm at Mrs. Baker's cottage; Mr. Moir's boy came for him. Examined the deceased, and found he was wounded in the right arm. The arm was much swelled above and below the elbow joint; not much at the joint;

one wound was on the inner side of the arm above the elbow, another on the back of the arm ; it was not bleeding. Witness called for brandy, and gave the man a little, because he was exceedingly faint ; after this, went to Captain Moir ; before going he applied a piece of linen, and put a tourniquet loosely on the arm, explaining to the men the use of it. The bone of the arm or elbow was not fractured. Saw Captain Moir, who met him at his gate, and observed, " Well, doctor, I have made, or chalked out, a job for you ;" is not sure which. Witness answered, " Yes, I suppose you think I have not had much to do lately," and requested Moir to step aside, as witness wanted to speak to him, which he did. Witness told him the ball had passed through the arm ; but as witness could not detect a fracture, nor any joint laid open, or the main artery wounded, he was in hopes the man would do well, and requested Moir to allow him to take the man to Stanford, where he could give him better attendance, and he would do all in his power for him. Had previously asked Moir for a horse and cart to remove him, the man having consented to be removed. Prisoner said, " By all means," telling a man to put a horse to and wait Mr. Dodd's orders, and saying he would pay witness anything for his attendance, provided it was not considered in the light of satisfaction for what he had done, as he would not give the man anything, for he had only got what he deserved ; but added, " Come in, doctor, and I'll tell you all about how it happened." Witness went in, and Captain Moir said, " This fellow was setting a net in my creek, and I went and told him to take it up, as he should not fish there ; the man would not ; and I told him if he did not I would cut his net. I had a knife in my hand, and I said, ' Now, will you take it up once, will you take it up twice ; and if you don't the third time, by God I'll cut it.' The man took up his net, and was dreadfully abusive to me. I said, ' Since you have been so abusive, you shall go back a longer way than you came.' I said, ' You came across my marsh ;' the man said, ' Yes ;' and I said, ' Then you must choose to go by the wall back again—put another foot on my land at your peril.' I then came home, but thinking he would go across again, I looked at my pistols and ordered my horse. Some time afterwards, they called out from below, ' He is going across now, Sir,' and I rode out and met him. I called on him to stop." Witness is not sure that Mr. Moir told him he called repeatedly. " The fellow wouldn't stop, but walked on and said, ' You be d—d.' I then fired. The man dropped his pole, and called out I had broken his

arm. I said, 'I know that; will you go back now? because, if you don't, you shall have this one in your brains.'" Witness does not remember exactly whether Captain Moir said this, or only told witness that, if Malcolm had not gone back, he should have had it in his brains. "I said to the boy, 'Boy, take up that pole and walk off my premises; if you don't, I'll serve you the same way.' The poor boy, frightened enough, took up his pole and went away. As I was riding away, I called out to the man, 'I'll send a doctor to you.' I then came home, and sent my man for you." Captain Moir said, "Besides, my land is my castle, and nobody shall put a foot on it without my leave." Witness said to him, "Captain Moir, you will understand I came here, first, to borrow a horse and cart; secondly, to see whether you were drunk or sober, because, you know"—here Captain Moir stopped him, and, drawing himself up, said, "Well, what do you think of me?" Witness replied, "You are as sober as I am, and so is the man you shot." Moir replied, "I was not only sober, but as cool as I am at this present moment." "Why, Sir," prisoner continued, "it was half an hour between the time I quarrelled with the man and when I rode up to him, and I will do the same to-day, to-morrow, or any time I am trespassed on." Nothing else materially passed. Witness the same evening found Malcolm at Stanford-le-Hope; he had borne the journey tolerably well, but was still very faint. Witness looked at his arm again, and then put him to bed. He dressed his arm with lint and oil, and two little strips of strapping to keep the lint in the place, and placed the tourniquet in the upper part of the limb, lest it might be wanted; poured cold water constantly upon the arm, and gave him a composing draught; visited him again the same evening, and thought him rather better; saw him the first thing next morning, and continued with him off and on till twelve o'clock; did nothing to the arm that morning, except continuing the cold water; in the evening he saw him at five o'clock, and found him not quite so well; he complained of rather more pain; the swelling had increased, and his pulse was getting fuller. Witness sent for Mr. Robinson of Avely, a surgeon, who came about seven o'clock; he and witness consulted, and bled the man. Gave him some aperient medicines, and applied a poultice, instead of the cold water. The bleeding reduced the pulse, which was desirable. Mr. Robinson and witness staid with Malcolm from seven till ten o'clock. Malcolm then appeared better. Mr. Vidal came to witness's house. Witness had previously heard that Mr.

Vidal was coming, and, thinking there might be a disagreement between himself and Mr. Robinson, he thought it best to have a third person. Went together to see Malcolm. Avely is about ten miles from Stanford. Told Mr. Vidal what had been done. Malcolm, the next morning, was much about the same as the evening before. Witness continued to attend him daily. Mr. Robinson went occasionally. Mr. Vidal thought Malcolm was doing so well, that there was no occasion for his attendance, suggesting only the use of leeches, instead of a lancet, should bleeding be again necessary. The man continued to get better till the following Tuesday evening, on the morning of which he was better at twelve o'clock. On the same night witness saw him again; he had been out, and was detained from home; he then found Malcolm labouring under symptoms of lock-jaw. Mr. Robinson saw him next morning. Mr. Vidal had been sent for, and saw him next day. Witness was in attendance the whole of that day. The deceased got worse, and died between two and three on Thursday morning. Witness was with him at the time of his death. The day before, about noon, he had told the man of his danger. A clergyman, named Goodchild, was there. Witness sent for a magistrate, and Dr. Hogarth came. In witness's judgment, the locked jaw caused Malcolm's death. The wound caused the locked jaw; of this he had no doubt.

Cross-examined by Mr. Gurney.—The bleeding had stopped; did not give the brandy to see if the artery was injured; the bleeding was a little restored. Had said that he ordered two glasses, to see if the hæmorrhage would return. After Malcolm had been removed to Stanford he did not order any more. Ordered him some brandy on his journey, if he was faint, which he understood was given. Was not by to see the quantity. Witness paid for one glass. Ordered some brandy on the Saturday, in the after part of his illness. Witness supplied him after Saturday from his own table, by order of Captain Moir. After the locked jaw, more brandy was given; he spilt a good deal. He had gruel, in which was a little brandy, just enough to flavour it, for his supper. If he got more than this, it was without witness's orders.

Mr. John Robinson, a surgeon, residing about three miles from Stanford-le-Hope, saw Malcolm about seven or eight in the evening of Thursday. In witness's opinion, the treatment pursued by Mr. Dodd was perfectly judicious. Saw the man on Saturday, about the middle of

the day. The wounds looked moist, and appeared to have a disposition to suppurate. The man's general health was nearly as good as ever ; he was going on extremely well. Saw him again on the Sunday, and found him remarkably improved. Went on Wednesday, in consequence of Mr. Dodd calling on him, when he found that locked jaw had taken place. That the wound caused the locked jaw, he had no doubt.

Mr. Charles Lewis Vidal thought the course pursued perfectly right.

James Clark.—Keeps the Cock and Pie at Stanford-le-Hope ; remembers Malcolm being brought to his house, and remaining there till his death ; Malcolm was supplied according to the orders of Mr. Dodd, and had no brandy but what was ordered, to his knowledge.

Cross-examined by Mr. Clarkson.—Deceased had about half a pint of brandy altogether ; some gin was ordered, but not drank.

Lord Tenterden then called upon the prisoner for his defence. He rose, and, in a firm voice, said, that he had been in his Majesty's service for years, and that he was not a man to behave cruelly to any one. The last regiment to which he had belonged, the 87th Foot, as well as the one to which he had been previously attached, was now unfortunately in India, and he was thus deprived of the benefit which would have resulted to him from the testimony of those who had served with him as to his general character for humanity and kindness. The conduct of the deceased had brought on their unhappy quarrel. As to the pistols, he always carried them with him ; for persons who came into the neighbourhood as William Malcolm had done, were of such a lawless description, that, since he had been there, he had been afraid to be without them. The deceased was a perfect stranger to him ; he could not, therefore, have borne him any previous malice. Further than this, he had nothing to say, but would leave himself in the hands of his lordship, his counsel, and a British jury.

The following witness was then called for the prisoner :—

William Little.—Dukes, on the 18th of March, told witness he was four paces off when the pistol was fired, and that Malcolm said, he would go across the marshes in spite of the captain's teeth, and be d—d to him.

Several witnesses gave Mr. Moir the highest character for humanity.

This closed the defence.

Lord Tenterden summed up. It could not be controverted that William Malcolm died from the wound inflicted by a pistol fired by the

prisoner. For some time certainly he appeared to be improving ; nevertheless, a locked jaw ensued, which caused his death. The question more immediately for the consideration of the jury was, whether Captain Moir, at the time of the fatal transaction, had any reason to think that his own life was in danger. No evidence had been given that the deceased offered to do him any mischief ; and the mere trespass, of which the prisoner complained, was not sufficient to justify an act like this.

The jury retired, and after being absent about twenty minutes, returned with a verdict of guilty.

His lordship then sentenced the prisoner in the usual form to be hanged on Monday, the 2d of April, and his body to be delivered for dissection.

The only time when Mr. Moir appeared at all moved was when the verdict was returned ; a slight flush overspread his face ; and when the dissection was mentioned, he seemed to shrink within himself, but in a moment regained his wonted firmness.

After his conviction, a strong and urgent appeal was made on his behalf to the Government, and it was suggested that the act on the part of the unhappy man had been dictated by insanity. It was declared, however, that it was too late to hope for mercy upon any such grounds, which ought to have been made the subject of inquiry at the trial, where, had they proved well founded, they would have relieved the prisoner from all criminal responsibility. To this answer the obstinacy of the unfortunate gentleman, who refused to offer any extenuating circumstances in his own favour to the jury, which should subject him to perpetual imprisonment, was replied, but all was of no avail, and the sentence of the law was directed to take its course.

In the meantime, the wretched prisoner, unconscious of the measures which were taken by his friends with a view to secure his safety, diligently applied himself to the only duty remaining for him to perform on earth—that of making his peace with the Almighty. He attended divine service in the chapel of the jail on Sunday, and was afterwards visited by his wife, then only twenty-eight years of age, his mother, his sister, and some friends, of whom he took a most affectionate farewell. At about seven o'clock on Monday morning he received the sacrament, and expressed himself perfectly resigned to his fate, stating at the same moment, that he had not the smallest degree of animosity against the

ill-fated man whose death he had caused, and whom he had had no intention to kill. Throughout the dreadful concluding scene of his life, he conducted himself in the calmest manner. He ascended the scaffold, declaring that he was at peace with all mankind, and repeatedly denied that he had had any feeling of unkindness towards Malcolm. His body was subsequently delivered over to the surgeons for dissection ; but after such an anatomical process as was sufficient to fulfil the terms of the sentence, it was humanely sent to his unhappy widow for interment.

## THE CLAVELL WILL CASE.

THE Rev. John Clavell, rector of Church Knowle, Dorsetshire, and a magistrate for that county, whose supposed will formed the subject of this remarkable case, was the representative of the ancient and eminent family of Clavell, of Smedmore, in the Isle of Purbeck, which had resided and held possessions in the co. of Dorset almost from the Conquest. A short account of the Clavell pedigree, as it stood at the time of this will affair, will make the following trial more easily understood.

Edward Clavell, Esq., of Smedmore, who died in 1738, left by his second wife, Elizabeth, daughter of George Damer, Esq., four sons, the last of them George Clavell, who all died without issue, and a daughter, Margaret, married to William Richards, Esq., of Warmwell, in the co. of Dorset, who had issue three sons—William Richards Clavell, who married Sophia, only daughter of Richard Bingham, Esq., of Melcombe Bingham, in the co. of Dorset—John, and Edward, and two daughters, the younger, Sophia (called Mrs. Richards in the trial), and the elder, Margaretta Elizabetha, married to Edmund Morton Pleydell, Esq., of Whatcombe, also in Dorsetshire. On the death of the last of their uncles, George Clavell, Esq., of Smedmore, without issue, the two elder sons of Mr. and Mrs. Richards—William and John—successively succeeded to the estate of Smedmore, and assumed the surname of Clavell. The younger of these was the Rev. John Clavell of this trial, who died at Smedmore, unmarried, on the 14th June, 1833. The Colonel Mansel, who appears also in the course of the investigation, was John Mansel, C.B., a colonel in the army, the third son of Sir William Mansel, Bart., of Iscoed, in the co. of Carmarthen, and the husband of Louisa, sixth daughter of the above-mentioned Mr. Pleydell, of Whatcombe.



The trial took place before Lord Denman, at the Summer Assizes held at Dorchester, in 1834, and lasted four days, from the 22nd to the 25th July. The action was one of ejectment brought by the coheirs-at-law, against an alleged devisee: and the question was whether or not the Rev. John Clavell had made a will, by which he had devised estates of the value of upwards of £2,000 a-year to the defendant, who was his bailiff at the time.

Sir James Scarlett, in support of the will, called the following witnesses:—

Mrs. Elizabeth Churchill.—I am a widow. My husband had been a silversmith in Dorsetshire. I had three children, William, Frances, and Elizabeth. My daughters and myself kept a school in Dorchester. It was discontinued on account of the ill health of my daughter Frances. I knew Mrs. Richards and Mrs. Frampton. In 1830 I received a letter from Mrs. Richards, the sister of Mr. Clavell, which was brought by Mr. Voss, who was bailiff and tenant to Mr. Clavell. A letter of the 12th April, 1830, was read, in which Mrs. Richards begged Mrs. Churchill to go to Mr. Clavell as his housekeeper. That letter was delivered to me at Salisbury, and I went the next morning to Smedmore (Mr. Clavell's house). My youngest daughter was then in Salisbury, and my eldest at Sherborne, as a private governess. In about eight weeks after Mr. Clavell told me to invite my daughters to come and see me. My daughters came in a week or a fortnight after. They stayed a month. While they were there, I heard of a school at Corfe. I took that school for my daughters. My eldest daughter, in September, 1831, became ill, and Mr. Clavell desired me to invite her again to Smedmore, where she recovered very slowly. Mr. Clavell was very kind to her. Mr. Clavell then slept in what is now called the muniment-room. In February, 1831, he removed into the alcove-room. When I first went no one was permitted to go into his bed-room. He made his own bed. When he removed to the alcove-room, the housemaid made his bed. I never went into the muniment-room for a year after Clavell had left it. Dr. Heywood had attended him, and then Mr. Galloway, and Dr. Robert Carruthers of Swanage. After Mr. Clavell's illness I slept in a room within the alcove-room. When my daughter came, she superintended the servants and linen, and sometimes she wrote notes for Mr. Clavell, and read to him frequently. In 1830, Mrs. Richards and Mrs. Clavell came on a visit to Mr. Clavell—afterwards Mr. Pleydell and his two daughters.

came there. Mr. Pleydell was Mr. Clavell's sister's husband. Colonel Mansel afterwards came in the latter part of the summer—they each stayed a few days. I believe Colonel Mansel never visited him again. He used to call Mrs. Richards, Sophy. I have heard him say Voss neglected his farms. I recollect Mr. John Barnes coming into Mr. Clavell's service in October, 1831. There were rooms prepared in the house for him. He acted as bailiff, and also rented a farm of Mr. Clavell. I recollect the brothers of the defendant coming to the house. I was in the alcove-room with Mr. Clavell. My daughter told him they were come. Mr. Clavell told me to order refreshment for them. My daughter prepared tea, and I went down and drank tea with them. On my return, Mr. Clavell sent my daughter to bring them up. Mr. Clavell shook hands with them. He took a paper out of his pocket, and said he wished us all to sign it. He opened it, and laid it on the table. He put on his spectacles and looked it over, and told my daughter to get pen and ink, and write what he dictated. He asked me the day of the month, and I told him the 10th of April. He then told Fanny to write down "this 10th day of April." Then he signed it himself, and I made a seal with Mr. Clavell's seal; he took it up and said, "This is my last will and testament," and put his thumb on or near the seal, and added, "I wish you all to sign it. Now, Fanny, as you wrote it, you sign it first." She did so. He then desired me to sign, which I did. William Barnes signed it next, and then Samuel. He then folded it up, and put it in his pocket. He said "I desire you'll not mention it, any one of you." We told him we would not. William and Samuel Barnes then went away. The defendant drank tea with us that night. Mr. Clavell was as well then as I had known him. This is Mr. Clavell's handwriting to this seal. This is my writing, and the body of the will is my daughter's writing. There was an impression of the seal attached to his watch. I had not before heard of the will having been written. I could not learn from my daughter the contents of the will. I asked her, and she said, "Don't ask me, mother, I cannot tell." Mr. Clavell became ill in the latter part of April. He had pains in his legs. Mr. Galloway was sent for. On the 1st of May, Dr. Carruthers was attending me, and Mr. Clavell said he would see him also. He continued to get worse, but went out in an open carriage to the latter end of May. Dr. Heywood was afterwards sent for. Mr. Cope was also sent for. Mr. Clavell died on the 14th of June. Some instructions for leases were executed by Mr.

Clavell the latter end of May. I attested them. They were given to Mr. Barnes to take to Mr. Dugdale, to prepare the leases. I heard Mr. Barnes, two or three days before Mr. Clavell's death, ask him if he had made his will; he said yes. I asked him where it was, and he said something which I could not understand, and never spoke more about it. After Mr. Clavell's death, Mr. Morris was sent for, and he sealed up all the boxes and drawers, and the door of the muniment-room. Colonel Mansel came in the evening. I saw Mr. Bond with him. Colonel Mansel sent for me to accompany him to the muniment-room. We went into that room; there was a box there with papers in it. The colonel took out a paper or parchment, and said that was Mr. Clavell's will. Colonel Mansel and Mr. Bond went into the closet in that room. I retired to my own room. Beds were made up for Colonel Mansel and Mr. Bond. I left on the Thursday after the funeral, which took place on the Friday after Mr. Clavell's death. Mr. Richards and Mr. Bartlett came there the day after the death. Colonel Mansel asked if there had been an attorney, and I said there had not. He told me he understood Mr. Clavell had destroyed some papers, and asked me if there was a will among them. I told him I did not know. I had my goods there in a garret. Eales had some of his grandmother's property there. Mr. Bartlett's clerk took an inventory of my goods; they were removed the Monday after the funeral. Colonel Mansel and Mrs. Richards knew they were going to be removed, and sent Mr. Bartlett's clerk to take the inventory of them. My goods were taken to a cottage I had hired of Mr. Barnes. I went to defendant's father, at West Lulworth. Joseph Eales was on a visit to Mr. Clavell at the time of his death. Mr. Clavell had frequently desired me to give meat, wine, &c., to Eales when he went away, and I gave him some on the occasion of his leaving. I recollect some constables coming to Mr. Barnes's. My daughter came in just before them, and ran up stairs. They searched the house. They searched my box. They took away the defendant and his brother William as prisoners. I went before the magistrates on the 15th of July. My goods, which I had sent to Salisbury, were brought back. On the 2nd of October I was fetched by my daughter to Mr. Barnes. The next day I heard of the will. I learned my daughter had it. I saw it at Doctors'-commons, which was the first time I had seen it since its execution. There was an advertisement for the will. Mr. Clavell was a most amiable man, and I considered him very clever. I have heard him say, that in

early life, when he was only a poor clergyman, he was not respected by his relations, and that they noticed him now for the sake of Smedmore. Some money was sent to Mrs. Richards shortly before his death.

Cross-examined.—I do not recollect that Mr. Clavell's family complained that I did not let them know anything of his state of health. I never heard Mrs. Frampton complain that I kept the family away. I never heard Mr. Clavell boast of his descent, or the antiquity of his family. I never was cook in any family. I did attend to the cooking. I never told Mr. Clavell that Voss was a bad farmer, that I can recollect. I don't recollect that Barnes ever told him so. Before Voss was discharged, his premises had been searched for smuggling. Mr. Clavell told me to write to the officers to search. Nothing was found. Mr. Clavell had received some letter about it. I know nothing of that letter. I never wrote an anonymous letter. Upon my oath this letter is not my writing, and I never saw it before, nor do I know who wrote it. I never went with Mr. Clavell to Mr. Bartlett's about leases. Mr. Clavell had not had fits. He stumbled over a stone in March, and fell down. I frequently sent things to my daughters at Corfe by Mr. Clavell's desire. I always sent them openly in my own name. My husband had been a servant before he became a jeweller. He was unfortunate in 1819. Mr. Clavell could read without difficulty. He did not like to sign things before strangers, but he signed the leases without saying a word. His hand was not guided by any one on this occasion. He wished Barnes health and success. This is the seal which was used both for the leases and the will. They stayed in the room about ten minutes when the will was executed. I never saw the will taken out of a box. I did not say to Colonel Mansel or Mr. Bond that I had never been in the muniment-room before in my life. I never told Colonel Mansel or Mr. Bond that Mr. Clavell had not made a will that I knew of. I told him I did not know where it was. I said I was sorry there was no will to be found, as he had promised to provide for me, and I know he had done so. I asked Mr. Bartlett, if he had not got the will. I did not cry before Bartlett, and say if Mr. Clavell had not made a will, he had behaved very ill, and not like a man of his word. I did not say to Bartlett that if he (Bartlett) had not prepared a will, I believed Mr. Clavell had not made one at all. I did not tell Hooper that Mr. Clavell had died without a will. I know Green. I did not state to him that Mr. Clavell had made no will. I never said in the presence of Sarah Harris that Mr. Clavell

had made no will. I do not know what money there was in the house when he died. I gave up all the money I had. I don't know that any boxes were removed out of the window at night. The waggon came for my goods at ten o'clock in the morning, and stayed till two or three. I do not know of Best taking things in the night. I never told the postmaster that I would pay him if he would enclose Mr. Clavell's letters to me. Two letters had been broken open. I never was in the habit of opening Mr. Clavell's letters. It never occurred to me to be proper, when the inquiries were going on, to state that a will had been made. I had suffered such persecution that I was afraid to say a word. I had imagined the will had been destroyed. I was afraid to say, I had witnessed a will, because I could not produce it. Mr. Clavell had charged me not to name it, and I did not. Mr. Clavell told me in his last illness "If I did not provide for you, I should be a brute indeed." Vincent was discharged by a letter of mine; he was the footman. I never gave directions to Squib, Hockey, or Short, to go a certain way round to escape observation. Now I have spectacles I can say I have seen this letter before, but I do not know whose hand-writing it is. I never said that Mr. Clavell's relations should not be admitted while he was in his senses. I never called Mrs. Richards "Silly Sophy." I told Dr. Carruthers that Mr. Clavell was as helpless as a child, but I never told him that he was a mere child. He read the newspaper a week before his death.

This witness was five hours under examination.

Miss Frances Churchill.—I am the daughter of the last witness. (She then gave a detailed account of the mode in which she had lived until she came to live at Mr. Clavell's.) I was ill when I first went there for some months. Mr. Clavell was very kind to me. When I got well, I used to sit in his room and read to him. He played with us at backgammon. I assisted my mother in the affairs of the house. I used to write letters for him, and sometimes copy papers for him. He appeared to have confidence in me. I have been acquainted with the Barnes's for some time. On Mr. Barnes coming home with me one day, Mr. Clavell told him that he had known his uncle and his wife's father. He asked him what family he had; he told him three sons and two daughters, and what their occupation in life was; and upon hearing two of them were good farmers, Mr. Clavell said the farmers near him were not good ones, and that he wished he had one of Barnes's sons. In March, I was sitting

with him ; he told me to get a pen and ink, as he wished me to write something for him. I got a sheet of letter paper ; he told me it was not large enough ; I then got a sheet of foolscap. He said, " Now, Fanny, I want you to write my will." I said I did not know the way, as I had never seen a will in my life, and asked whether it would not be better to have a lawyer ; he said, " You are my secretary, now I will make you my lawyer," and to write what he told me, and it should be as good a will as any lawyer could make. I suggested Mr. Bartlett ; he said if he made it, the Pleydells would know it by the next morning ; but if I wrote it, no one would know it. He took some parchment and papers from his pocket ; he told me to begin writing, and he then dictated to me, and he told me to spell the words at full length. I got through about half that day, when he said that would do, and I read it to him, and folded it up, and gave it to him. A day or two afterwards, Mr. Clavell said, he wished I would finish it, and I did so by his dictation. I then read it to him, and gave it to him. About ten days after he applied again, and wished me to make some alteration. He took the paper from his pocket, and told me to write from the first to that part that related to Mrs. Clavell ; and he then dictated a part, giving the rents and profits to Mrs. Richards for her life. I only got through part that day. I then read that to him. I wrote the witnessing part to it in small lines, and then gave it to him. I put the other in the fire. In a week or ten days after, he said he had forgotten something which he wished to add. I asked if I should write it again. He dictated to me what I was to say. I burned the second copy by his desire. I read over the last to him, folded it as a letter, and gave it to Mr. Clavell. He said he had been thinking whom he should have for witnesses, as he did not want any one who would tell. He then mentioned the Barnes's, and asked if I thought they would sign it ? I had heard him say once or twice before that he would give the property to Barnes. Mr. Clavell desired me to write for the Barnes's. I sent a note to them by the miller's boy on Saturday ; they came on the Wednesday following, the 10th of April. I saw them coming, and told Mr. Clavell of it. He said they would want some refreshment. We then had tea, and afterwards, by his desire, we went up stairs. Mr. Clavell shook hands with them both, and said he had never seen William before, but had seen the house he was building. He took the will from his pocket, and said he had something he wished them to sign, and put it on the table, and told me to write the date.

He then signed it. He then desired my mother to light a taper and seal it, which she did. He took it in his hand and said, "This is my last will and testament, and I wish you all to sign it;" and told me to sign it first, as I had written it. We then all signed it. This is the paper. He desired us not to mention a word of the circumstance. He then put the will into his pocket. Mr. Clavell was very well at that time. Sometime after this I was sitting by his bedside; he took the will from under his pillow, and said, "You know what this is?" I said, "I do, sir." He said he wished me to seal it up. I took wax to his bedside, and he told me to seal it in two places. I put two seals on it with his coat of arms. I gave it him. He looked at the seals, and said, "Now, Fanny, I give this to you, and take care of it, and don't tell any one you have it." I asked what I should do with it? He said, "Take care of it, and keep it till I have been dead three or four months." I asked what I should do then? "Tell Mr. Barnes he is appointed executor." I then folded it in a handkerchief, and put it in a trunk in my bed-room; it remained there till his death. He conversed as rationally on the day of his death as he had ever done. I recollect the constables coming to our cottage; they said they came to search for deal boxes and hams; they searched, and broke open my writing-desk, because I had not the key; one of them began reading my letters and papers; he said he had private orders to search for papers. The will immediately came to my mind; and I was going to walk to Mr. Barnes's, where my trunk was, but I went into a cart, and the moment I got there, I ran up stairs, and got the will and put it in my bosom, and kept it there two days and two nights. A guard was put round the house. I did not take off my clothes during that time. The impression was originally good, but is now defaced. After the alarm was over, I returned it to my trunk. On the 3rd of October I mentioned the will. I did not name it before, because I had promised Mr. Clavell to keep it a secret. I wished my mother to be present, and sent several times for her, and at last came myself for her. Mr. and Mrs. Barnes, Anne, John, and Samuel Barnes, and my mother, were present. I told them I had it, but did not produce it. I said Mr. Barnes was executor; he said he would consult Mr. Dugdale: he went there a day or two after. On the 12th of October we went to Mr. Dugdale. I produced the will, and gave it to Mr. Dugdale; he advised Mr. Barnes to go to town and have it proved. There has not been any courtship or engagement between me and Mr.



Barnes. I never mentioned the contents of the will, or that I was in possession of it, till that day.

Cross-examined.—Mr. Barnes pointed out the advertisement inquiring for the will to me. I went from Smedmore to Mr. Barnes, and remained there about two months. I then came to my brother's at Dorchester, and stayed a fortnight, and then went to Salisbury, from thence to Lulworth, and then to London. I have been at Mr. Barnes's twice since for a day or two. I have been at his house for three weeks lately. My home is at Woolbridge. When I kept a school at Dorchester, John Barnes called occasionally with his sister. My mother lived with me at the time. He never came to us at Corfe but once. He never slept there. Miss Moore was at school with us at Corfe. She was not removed till I gave up the school. When I got to Smedmore, Mr. Clavell came to see me that night or the next day. I did not write this anonymous letter. Mr. Clavell showed it me at the time he received it. I most solemnly say upon my oath that it is not written by me, and that I never saw it till Mr. Clavell showed it me, and never received a letter from John Barnes. Mr. Clavell signed his name without assistance. I have heard Mr. Clavell say that he would take care of John Barnes after his death. I never said to Mrs. Florence that Mr. Clavell was quite in his dotage. I never had any talk with any one as to where I was to live when I was married. I told my mother, after I had said I had the will, that the property was left to Mr. Barnes, but I did not tell Mrs. Barnes so.

This witness was three hours and a half under examination.

Samuel Barnes, brother of the defendant.—I went with my brother John to Smedmore. We had tea, and then Miss Churchill desired us to go up stairs. We went up, and Mr. Clavell shook hands with us. (The witness then detailed the circumstances attending the execution of the will in the precise terms given by the other two witnesses.) I afterwards went to a church meeting. I was taken to Wareham three times, charged with carrying things from Smedmore.

Cross-examined.—Mr. Clavell told us not to mention the execution of the will, and Miss Churchill asked me not to mention it a few days after his burial. She said very likely they would take us up, and make a piece of work about it, and we did not wish to be brought into question. Miss Churchill said in the family that she thought she should answer the advertisement.

William Collins Barnes corroborated the testimony of the former wit-



nesses as to the execution of the will. They all concurred in stating that the time of execution was between four and five in the afternoon.

The will was then read, by which Mr. Clavell gave his estates to the defendant, and appointed him his sole executor, subject to the payment of some annuities. The will was attested by Frances Churchill, Elizabeth Churchill, and Samuel and William Barnes.

Joseph Eales.—I am grandson of Mrs. Eales, who was formerly house-keeper to Mr. Clavell. I lived there till 1831, and then went apprentice, but visited Mr. Clavell as often as I could. He has left me a legacy of £1000. I have known Mrs. Richards and Mrs. Clavell visit him three times. Colonel Mansel stayed there twice. I have heard Mr. Clavell say that he had executed leases to Barnes and his father, and that it was out of any person's power to injure them now, and he would take care it should be after his death. He said he had been treated very ill by his relations, but that they wanted to come now; that formerly it was "John Richards," but now it was "dear uncle;" but he would take care they should not come there. He said he wondered at their impudence in coming there without having been invited. I have not a shadow of doubt but the signature to the will is Mr. Clavell's handwriting.

Cross-examined.—I was told that I was left £1000 on the 20th of September, by Mr. Whit, who said that Mr. Clavell had told him he had left it to me; but he was afraid it was a bad job about the will; I told Miss Churchill of it.

The Rev. Edward Whit said—I knew Mr. Clavell thirty years. I was his curate. He very rarely received visits from his relations when he lived at Knowle. I frequently dined with him when he was at Smedmore, and then I have met his relations there. He once told me that Mrs. Eales was dead; that he had left her £1000, and he wished to know whether he could give it to her grandson without making a new will. Some time afterwards he told me to get a book upon wills. I afterwards found a similar book in his library. I told Eales that it was a bad thing for him that there was no will, because he would have had £1000. I had once a conversation with Clavell that left an impression he intended to leave me something. About two months before his death I heard him say to Mrs. Richards, "What, can't a man do what he likes with his own? I will, and that I'll have you to know, sister Sophy." I know his handwriting well. I believe this signature to the will to be his. I have no doubt it is his.

Cross-examined.—He told me I should find at his death that he had been a good steward of the Lulworth charity, and that it was at a bank. He did not say he should add half-a-crown to it. He generally used the term half-a-crown for a £100 note. He said he would give me £500 for dilapidations, and at his death he should add two or three half-crowns to it. He did not state that he had provided for the tower. If I have said so, it was incorrect. He proposed to allow £300 a-year for the repairs, and I told him £50 a-year would be sufficient. I did not learn from him that he had left the bulk of his property to his family. Within a month of his decease, when I called, I was told he was too ill for me to see him. After the death of Mrs. Eales he had a long illness, and I called and sent, but did not see him ; and when I afterwards saw him, he said he had not thought I would have deserted him, and that he was never too ill to see me. I called three times in May, and Mrs. Churchill told me he had professional men attending him. I may have stated that Mr. Clavell told me whoever took his property should take his name, but I can't recollect what may have been taken down in writing in private conversations. He was a man of high aristocratic feeling, and proud of his descent. Six months before his death he expressed great anger at Barnes, and said if Barnes did not take care he should discharge him. I certainly learned from Mr. Clavell that he had made a will long before March, 1833.

The Rev. Craven Morris.—I was curate to Mr. Clavell fifteen years. I was sent for immediately on his death, and sealed up all his papers. When Colonel Mansel arrived he broke them all open. The Colonel told me he did not go to bed that night. Mr. Bond said he slept on the sofa. Mr. Bartlett came the next day. The signature to the will is Mr. Clavell's.

This was the material evidence on the part of the defendant.

Mr. Sergeant Wilde, on the part of the plaintiff, called the following witnesses :—

Mr. Bond.—I am a clergyman and magistrate of this county. I heard of Mr. Clavell's death a little after eight o'clock in the evening. I accompanied Colonel Mansel to Smedmore directly. John Barnes opened the door. I saw Mr. Morris, who met us in the hall. We went into the drawing-room. Mrs. Churchill came in. Colonel Mansel asked her whether Mr. Clavell had left any verbal directions. She said not : or any memorandum, she said not. He asked her whether she knew

where Mr. Clavell's will was? She said she did not. She said she knew nothing of any will; that he had never mentioned the subject to her, and that, as far as she knew, he had not made a will while she was in the house; if he had, it was not with her knowledge; that he was very close in his private affairs. We then proceeded to search for a will, accompanied by Mrs. Churchill and Mr. Morris; we had sent for Mr. Bartlett, so that everything might be done properly; he did not come, and we proceeded to search without him. We searched the drawing-room, and then went to the muniment room—the door was sealed. We broke the seal, and Mrs. Churchill gave us the key, and said either that she had never been in the room before, or only once before; every part of the room was strewed with papers. We made a hasty search; no papers were taken out of the room. After we had searched for an hour, Mrs. Churchill went to bed. Colonel Mansel and myself went into the drawing-room, and went to sleep by the fire in that room. We saw John Barnes in the cedar parlour about two o'clock that morning; he came into the room while we were there. No papers whatever were burnt or destroyed that night.

Lieutenant-Colonel Woodford.—I have heard Mr. Clavell allude to Colonel Mansel in very high terms as an officer, and speak of him very feelingly and kindly. Mr. Clavell boasted of his family coming over with William the Conqueror. I have heard him mention Barnes with no great respect.

Mr. Edmund Morton Pleydell.—I married the sister of Mr. Clavell. There never was the slightest dispute between him and any part of my family, and I have reason to believe he was always happy when he was at my house, and I was always received by him in a most friendly manner. The last sleeping visit I ever paid was with my daughter to Mr. Clavell, in 1830. Nothing occurred to change our regard. Colonel Mansel married a daughter of mine, and has five children. Mr. Clavell stood godfather to his son John, about fifteen years ago.

Mrs. Sophia Clavell, the widow of William Clavell, Esq., of Smedmore, the elder brother of the Rev. Mr. Clavell.—I visited the Rev. Mr. Clavell at Knowle, and was on the best terms with him. I visited him afterwards at Smedmore. I met the Mansel and Pleydell families there; he spoke of them with the greatest affection; we all continued on the same terms till the time of his death. In October, 1832, his eyesight was very

indifferent ; he wore a shade. I saw him read, but not for a long time together.

Charles Oldfield Bartlett.—I am a solicitor at Wareham, and am the attesting witness to this deed, dated 26th of June, 1817, granting an annuity by Mr. John Clavell to Mrs. Pleydell during her life. I am son and partner of Thomas Bartlett. I recollect Mr. Clavell's death. After the funeral I went there in search of a will. I said to Mrs. Churchill it was very extraordinary. She said, "it was, and that if he had not left her something to enable her to live without going out to service, he had not acted well." I said, "may not Mr. Dugdale have made a will?" She replied, "certainly not ; for he only employed him in little matters." I said, "might not Mr. Filliter have made one?" She said, "Oh, certainly not ; and if Mr. Bartlett had not made one, she did not believe he had made one at all."

Carrington Ley.—Mr. Pleydell lives in my neighbourhood. I frequently went to Wareham and met Mr. John Clavell ; he generally inquired for Mr. Pleydell's family ; he said, "How are my friends ? when did you see my relations?" These kind inquiries continued till his death.

Lieutenant Moore.—I am in the preventive service. I was intimate with Mr. Clavell till within six months of his death. I heard him speak of his family in the highest terms. In consequence of a letter from Mrs. Churchill, I went to Smedmore House to search for smuggled goods, but found nothing. He said his property was large, and would go to his family.

Sarah Harris.—I was at Smedmore on the 26th of June, 1833, cooking for Mrs. Richards. On the following day I had a conversation with Joseph Eales and Mrs. Churchill. Eales said in her presence, that Mr. Clavell had died without a will ; and she said there was no will to be found, for Mr. Clavell made no will.

Ann Maidment.—I was servant to Mrs. Richards. I went to Smedmore on the 15th of June. Mrs. Churchill told me Mr. Clavell had not made any will during the three years she had lived with him.

Thomas Cooper.—I worked at Smedmore. I recollect Mrs. Churchill going away. She told me Mr. Clavell had died without a will, and gave me a shilling to drink, because she was no more mistress of that house. I used to receive my orders from Mrs. Churchill, and after Barnes came I had them from him. I was at work on the 10th of April at Church

**Knowle.** I went to Smedmore House about three o'clock in the afternoon, to let Mr. Barnes know what I was doing; he was not at home. Priscilla Knight told me he was not at home, and had not been there since the day before. I remained at Smedmore till five o'clock to see him. He did not come while I remained. I went after that to my father's. I saw Barnes on my way there at Steeple, about seven o'clock in the evening. He was on horseback going to Smedmore. He spoke to Mr. Moore, who opened the gate for him. I did not see either of Mr. Barnes's brothers there while I was waiting.

**Henry Cooper.**—On the 10th of April, 1833, I sold a cow to Mr. John Barnes at my house. He came about half-past five or six o'clock. He told me he had not been at Smedmore that day, but had left the day before and been all round the country. I made a memorandum of the sale on the 11th of April.

Sarah Cooper corroborated the testimony of the last witness.

**Mary Purder.**—My daughter was married on the 10th of April, 1833. Mr. John Barnes was at my house at Chariton that morning.

**Thomas Bascomb.**—I am in the preventive service. On Wednesday, the 10th of April, at eight in the morning I went to inquire for Mr. John Barnes at Smedmore House. I saw Mrs. Churchill, she told me he was not at home. I went again twice that day, but was told he was not at home. Mrs. Churchill had told me Mr. Clavell had died without a will.

**Cross-examined.**—I can't tell the month in which I communicated these circumstances to any one. I conversed several times with Voss about it, I can't recollect the day of the month; I went to Wareham to be examined on the day I went into the preventive service.

**George Senwick,** parish clerk of West Lulworth.—Our meeting was held on the 10th of April at four o'clock. I waited till after five o'clock before any one came. In about ten minutes, Barnes and his son Samuel came in.

**Matthew Randall.**—I keep the Red Lion at West Lulworth.—Samuel Barnes and his father came there on the 10th of April, and William Barnes came in about half an hour after.

**Mary Best.**—Mrs. Churchill told me Mr. Clavell had never made a will. Miss Churchill told me she was in hopes there was something left to her mother. She cried and said she was sorry there was no will.

The letters of administration to Mr. Clavell, dated the 16th of August,

1833, granted to Mrs. Richards, and sworn under £25,000, were put in and read.

Robert Taylor, postmaster at Corfe.—I received directions about Mr. Clavell's letters from Mrs. Churchill. I am acquainted with Mr. Clavell's handwriting. The signature to this will I believe not to be in his handwriting.

Cross-examined.—I doubt the signature to the lease being his as much. I should doubt this also [another lease]. I should say this was not his [the presentation of the Lulworth vicarage to Mr. Whit]. I believe this to be his writing [the instructions for the leases].

Mary Durden.—I was at Miss Churchill's school. Mr. John Barnes used to come in the evening, and the pupils were generally sent to bed when he came. I don't know whether he slept there. He was there very often.

Mrs. Fromage.—I live at Corfe. I worked as a washerwoman at Miss Churchill's school. They kept one servant. I have seen John Barnes there often in the evening. I used to leave at seven, eight, and nine o'clock. I have left him there. I never knew both the Miss Churchills to go away together. Every Saturday one of them went to Smedmore. Mr. Barnes said when he was married I should have some bride-cake. Miss Frances Churchill was present. He said he was going to have the farm near Smedmore, as soon as he was married to Miss Frances Churchill.

Elizabeth Stroud.—I was servant to Mrs. Clavell. I was at Smedmore. I did not see anything particular between John Barnes and Frances Churchill. I told her I supposed Swalland farm would be where she would live. She said it was very much out of repair, and she did not think that would be the house, but Orchard farm. I knew at the time that John Barnes had those farms. She asked me if I would come and see her when she got there.

Cross-examined—This was in August, 1832. It was not a jocular conversation.

L. S. Green.—I valued the effects of the late Mr. Clavell. While I was doing so, John Barnes claimed some hay, saying Mr. Clavell had given it to him. Eales claimed a boat. Colonel Mansel said that was very odd, when Mr. Clavell's name was on it, and he would not give it up. He said he would not wonder if Barnes was to claim the estate. He did not say he was once near having it.

W. Downes.—I was formerly footman to Mr. Clavell. I remember his paying a visit to Colonel Mansel in 1818. Mr. Clavell stayed there some days. There was a christening. When we got home Mrs. Eales wished him much joy of his son and heir. He thanked her, and said he had him called John Clavell, because he should not be christened twice—as he was.

Benjamin Warwick.—I am a seal engraver, in Regent-street, London. I have seen the seals on the will, as well as Mr. Clavell's seal. I have endeavoured to see if the seal was impressed with this seal, and it is my opinion that it was not. It has been impressed with some seal, the impression of which is smaller than this. There is something like an impression of a coat of arms. On the inside seal there is no impression whatever. It is impossible that if this will had been about the person of any one for a day and two nights, it could have so effaced the impression. I have kept an impression near my person for the last seven days, and that has confirmed my opinion. The inside seal appears more defaced than the other.

Cross-examined.—I can see a neck of an animal, but I cannot imagine what it is. I cannot discover any similarity between that and the seal. There is an appearance of a shield and an animal's head. Some sealing wax will become effaced sooner than others.

George Day.—I am in the banking-house at Wareham. I knew Mr. Clavell. I have seen him sign a dozen times. I should think this signature to the will was not his writing. I paid him £300 on the 30th of March, 1833.

Cross-examined.—I should not believe this to be his writing [the instructions to the lease]. This is something similar, but I should have doubted it [the other instructions]. There is something of his style to this [the lease]. I can't say whether, if it had been to a check, I should have doubted it. I should think this was not his [the grant of the annuity to Mrs. Clavell, produced by the plaintiff].

Thomas Bascombe, cashier of the Dorchester bank.—I was acquainted with Mr. Clavell's handwriting. This signature to the will appears of a lighter character than his. I should not like to pay a check with that signature. I should not believe it to be his.

Cross-examined.—I have expressed the same doubt before. There is a similarity. I should consider this more like it [the instructions for the lease]. I should believe it to be his. I think this is his [a lease to

William Barnes]. I should not believe this to be his [the other lease]. I think this is his [the instructions for Mr. Barnes's lease].

George Bramwell, of the firm of Dorrien and Co.—We received the dividends for Mr. Clavell. I have known his handwriting ever since 1817. I do not believe the signature to the will to be his writing.

Cross examined.—I saw him write once, but often received letters from him. I don't think that we showed the checks to any one but Colonel Mansel's party. We refused to show them any more, because we were tired of it. This I believe to be his writing [the instructions]. This is very much like it. I should think it was his [one lease], and this [the other lease], and also this [the grant of the annuity].

Thomas Bartlett.—I am an attorney at Wareham, and was concerned for Mr. Clavell. I prepared two or three leases for him. I saw him on the 30th of March and beginning of April at my office. The two Barnes's were with him. It was stated that they came to give me instructions for some leases to Messrs. Barnes. They said it was for twenty-one years. Mr. Clavell said, "No, certainly not." He asked me if it was usual, I said no. He then said he would not grant them, for he would not part with his estate for so long a term, and he was exceedingly violent. They were contending between twenty-one years and sixteen years for a considerable time. The ultimate instructions were for sixteen years. Mr. Barnes said if he would grant the lease for twenty-one years, it would be an encouragement to them to improve. They spoke of draining to Mr. Clavell, and it was agreed to have the usual covenants in the lease. No leases were prepared from these instructions. In all the leases I have seen in this country, and I have seen a great many, that covenant not to assign is invariably inserted. Down to the time of Mr. Clavell's death nothing had occurred to interrupt our connection. I was never concerned for Mr. Voss in the dispute between him and Mr. Clavell. The two letters, the one anonymous, the other from Mr. Clavell, I received. I also received this letter from Mr. Clavell, thanking me for my exertions in the affair with Voss. I have received the rents from 1829. Mr. Voss had been his bailiff for many years. No difference arose between Mr. Clavell and Voss that I heard of, until the Barnes's came there. I have heard him say he was greatly indebted to his tenant Voss, for the exertions he made, and he had done all his business gratis. From my knowledge of Mr. Clavell, I should not think him capable of dictating such a will as this. He certainly was not a man of business, and



undoubtedly, inferior to the generality of gentlemen. I very much doubt that this signature to the will is Mr. Clavell's writing. I do not believe it to be his.

Cross-examined.—I have seen the will before. I think this is his writing [one of the leases]. I do believe this is his writing [one of the instructions]; and this [the other]; and this I must believe to be his writing, though it differs [the other lease]. In 1829, he altered the formation of his C. This copy of Mrs. Eales's will is, certainly, in his writing: she died in 1830.

Re-examined.—From 1817 to 1829 he affixed his name to all instruments with a long C without any deviation; and from 1829 he adopted the small C.

George Filiter.—I am a solicitor at Wareham, and manager of the bank there. I was acquainted with the handwriting of Mr. Clavell. I believe this signature to the will is not his.

Cross-examined.—I think this is [the instructions]. I have heard the witnesses say what they have been examined to. I am inclined to think this is his [a lease]; I think this is more like his writing than the other [the lease].

Mr. Bartlett recalled.—There is invariably a dot put between the J. and the C.

Lord Denman.—But I don't see it.

Witness.—Oh, I see it's put in the wrong place here. I am sure he was agitated at the time. This is his handwriting, but there is not the dot, nor is the C made in the usual way. I went to the house the morning after his death. Mrs. Churchill told me that if I had not made the will, she did not think he had made one. I found in the small box an old £50 note and some shillings, which, with what I received from Mrs. Churchill, made £75.

George Coulson.—I am a clergyman. Mr. Clavell was not a man of splendid capacity. He was inferior to most men. I should say he was not of a capacity to dictate such a will. The signature to this will is not his writing.

Cross-examined.—I have seen him write. I believe this to be his writing [the instructions]. I never saw him write on parchment, and therefore, I cannot form any belief as to this [the lease].

—Witchell, clerk to the late Mr. Pike, a coal merchant.—I paid money to Mr. Clavel for tithes. I believe this signature to the will is not his.

Cross-examined.—I went to London to see it before. I believe this is not his handwriting [the instructions]. I cannot say this is [other instructions]. I believe this is [a lease]. I believe this is [the instructions he had first said he did not believe was his]. I believe this is his [this was the will folded up in a different way].

Several letters were read which had been written by Mr. Clavell to some members of his family, couched in the kindest manner.

Lord Denman summed up. . The question for the consideration of the jury was—whether they believed the four witnesses for the defendant. If they were speaking that which was untrue, they were not only guilty of forgery, but guilty of a capital crime—of forging a will; and there must also have been a great deal of conspiracy. They were to deliberate upon this; and he would not pay the jury so bad a compliment as to suppose any warning was necessary to discharge from their minds any wishes or feeling, but they would apply their judgment to the evidence that had been laid before them. His Lordship then read over the whole of the evidence, and at eleven o'clock on Thursday night the jury retired. At half-past four on Friday morning they returned a verdict for the plaintiff, thus invalidating the will.

## THE MURDERS AT STANFIELD HALL..

And ere the dawn of day appeared,  
 In Cumnor Hall so lone and drear,  
 Full many a piercing scream was heard,  
 And many a cry of mortal fear.

The death-bell thrice was heard to ring,  
 An ariel voice was heard to call,  
 And thrice the raven flapped his wing  
 Around the towers of Cumnor Hall.

MICKLE.

MICKLE's ballad, of peculiar aptitude in the above lines to the following narrative, has also a further relation with Stanfield Hall, where passed the horrors of the following, perhaps the most terrible domestic tragedy in the annals of English jurisprudence. Amy Robsart, Mickle's heroine, whose fate the romance of Kenilworth has since made for ever memorable, once resided with her father, Sir John Robsart, to whom the property then belonged, at Stanfield Hall. The manor of Stanfield, a very ancient one, is situate near Wymondham, in the co. of Norfolk. Its hall is a large building, in the old English style of architecture, with a moat before it, and an extensive park about it. The house and manor, during a long series of years, passed through various hands. In 1735 they came, by marriage, into the possession of William Jermy, Esq., of Bayfield. From this gentleman, who married Frances, daughter of Jacob Preston, Esq., of Beeston St. Lawrence, they descended by settlement and devise to his wife's three nephews successively. The last of these, the Rev. George

Preston, was father of his successor on the estates, Isaac Jermy, Esq., who in August, 1835, took, by license from the crown, the name and arms of Jermy, and who was the senior of the unfortunate gentleman that fell by the hand of Rush. At the time of the murders, the Jermy family was as follows :—Isaac Jermy, Esq., above mentioned, a barrister of the Norfolk circuit, and Recorder of Norwich, who was born in 1789, had married, first, Mary Ann, daughter of Sir Thomas Beevor, Bart., by whom, who died in 1823, he had an only son, Isaac Jermy, and a daughter, married to the Rev. William Jephson ; he married, secondly, in 1832, Fanny, daughter of the Rev. Mr. Jephson, Prebendary of Armagh, in Ireland, and by that lady, who died in 1835, he had a daughter, Isabella. In 1837 he succeeded to the Stanfield property on the death of his father, the Rev. George Preston. His son, Isaac Jermy Jermy, had married a daughter of the late Rev. Mr. Chevalier, rector of Paddingham, Suffolk, and had a daughter, then an infant. On Tuesday evening, the 28th November, 1848, Mr. Jermy, his daughter Isabella, and his son and daughter-in-law, Mr. and Mrs. Jermy, and their infant child, were residing at Stanfield Hall ; of these, Mr. Jermy, senior, Mr. Jermy, junior, and Mrs. Jermy, together with a maid-servant, Eliza Chestney, were on that evening shot down in the porch and entrance of their house by an assassin, who turned out to be James Bloomfield Rush, a farmer and land-agent, living at a place called Potash Farm, close upon Stanfield Hall. The two Messrs. Jermy were killed dead on the spot, and the lady and servant were grievously wounded. The sensation caused throughout the country by these acts of atrocity was without parallel, and the attention of the whole kingdom was directed to the trial of the murderer, which took place at the Spring Assizes, in 1849, at Norwich, and lasted six days, from Thursday, the 29th March, to the following Wednesday, the 4th April.

The incidents of the dreadful affair, the transactions and quarrels between Mr. Jermy and Rush, and the other various particulars are so fully given in the following report of this memorable trial, that it becomes unnecessary, by any further previous details, to add to its length, which it has been found almost impossible to curtail.

The trial began at nine o'clock a.m., on the 29th March, 1848, in the Shire-hall, at Norwich, which was densely crowded. The judge who presided was Sir Richard Monsey Rolfe, a Baron of the Exchequer (now Lord Cranworth, and a Vice-Chancellor). The counsel for the prosecu-

tion were John Bernard Byles, Esq., Sergeant-at-law; and Michael Prendergast (the murdered Mr. Jermy's successor in the recordership of Norwich, and now a Queen's counsel), and Charles Evans, Esqrs. Rush conducted his own defence.

The prisoner was arraigned on the indictment charging him with the murder of Isaac Jermy, Esq. He paid great attention to the reading of it, and pleaded "Not Guilty." He then asked his lordship for time to lay his papers on the desk, before the jury were sworn. The request was acceded to. The prisoner having arranged his voluminous papers (in doing which his hand trembled exceedingly), said, "I am quite ready, my lord."

The jury being sworn, the prisoner said.—My lord, may I make a few observations before the counsel makes his opening speech?

The Judge.—This is not the right time for you to do that; you will have an opportunity hereafter.

Prisoner.—The way in which the evidence is so extraordinarily got up, induces me to ask.

The Judge.—This is not the time for you to interfere; you shall make your observations afterwards.

The trial then proceeded.

Mr. Sergeant Byles rose and addressed the jury as follows:—

"Gentlemen,—It is to be regretted, on the part of the prisoner, that he has not thought fit to avail himself of the very able assistance which the bar of this circuit would have afforded him if they had conducted his defence; but he has preferred to conduct it himself. It will, therefore, be doubly incumbent upon us to be careful that we produce before you no evidence as to the admissibility of which there can be the least doubt. I trust that you will give us credit, that, in all cases of this kind, we would not seek, in that way, to do the prisoner any injury; and, if by any inadvertence or ignorance on our part, we should fall into such error, my lord will take care that the prisoner's ignorance of the laws of evidence shall occasion him no injury. Gentlemen, you will naturally say, what motive can the prosecutor assign for such a crime as this?—a question natural and reasonable; and the answer will make it necessary for us to take up the thread of these transactions at a period anterior to that to which your attention will be more especially directed, because there are, and have been, certain transactions between the deceased Mr. Jermy and the prisoner at the bar, the full understanding of which is essential to

the right apprehension of the facts of the case, in order that your judgment may be led to a safe and satisfactory conclusion. Gentlemen, the deceased Mr. Jermy was a learned friend of ours. He was the Recorder of the city of Norwich, and he was a gentleman of fortune. He was one of the chairman of the Quarter Sessions, and he was in the habit of presiding at those sessions in the very seat his lordship now fills. Mr. Jermy had a residence at Yarmouth, and he also had a considerable seat at Stanfield, in this county. His father, the Rev. Mr. Preston, died, I think, in the month of October, 1837 ; and when the late Mr. Jermy succeeded to the property, his name also was Preston, but after coming to the estate he assumed the name and arms of Jermy. Gentlemen, in the immediate vicinity of the Stanfield Hall estate there is a farm, called the Potash Farm. The Stanfield Hall estate consists of 700 or 800 acres of land, and a large farm-house, and the prisoner had been a tenant of the Stanfield Hall Farm. The late Mr. Jermy had also two farms at Felmingham, that place being on the other side of Norwich, and, I am informed, towards North Walsham. Now, one was occupied by the prisoner, and the other by his mother, who is since deceased, so that, in fact, he or his mother did occupy four farms—the Stanfield Hall Farm, the Potash Farm, one at Felmingham, and another farm.

Gentlemen, about the year 1844, the late Mr. Jermy advanced to Mr. Rush considerable sums of money upon the Potash Farm, the ownership of which, subject to the mortgage, belonged to Mr. Rush ; and one of the first documents which will be laid before you on this occasion is the act of these mortgages, because it is a deed that will have an important bearing upon this case. It is dated on September 20th, 1844, and it recites several prior mortgages, but the effect is this—a sum of five thousand pounds, in all, is charged upon that estate, by way of mortgage, and in favour of the late Mr. Jermy ; and the deed contains a provision—it being dated on September 28th, 1844—that the money is to remain on the security of that estate until the 30th of November, 1848. You will see at once that it is an important date ; because the tragical occurrence into which you will inquire took place two days before the money became due—the 30th November. The occurrence to which I have to direct your attention took place on Tuesday, November 28th.

Gentlemen, I shall produce, among other things, the prisoner's pocket-book. I shall show you that a note, in addition to the provisions of the mortgage deed, was given by the late Mr. Jermy.

On September 20th, in the pocket-book, we find this entry :—"Sept, 20th, Wednesday, Potash interest due.—Principal due 30th September 1838." That is evidently a mistake for the year 1848. There is only one other provision to which I shall call your attention in the deed of 1814. It is this ; the interest of £5,000 was four per cent. ; that would make £200 yearly, and the prisoner had turned a tenant, so as to enable Mr. Jermy to distrain for that rent of £200. Gentlemen, some disputes arose between the late Mr. Jermy and the prisoner in regard to the Stanfield property. I shall not trouble you with the details. Suffice it to say, that in October, 1847, Mr. Jermy put on some distress. I don't know that the particulars of the distress will be very material.

The late Mr. Jermy also brought an action against the prisoner, which was tried this time twelvemonth, for breach of covenant in the Stanfield Hall Farm. This seems to have occasioned in the prisoner's mind no good feeling towards Mr. Jermy. Now I shall be able to show that in the early part of the year 1846, by the testimony of a person named Howe, the prisoner expressed himself in a very angry way towards Mr. Jermy :—"I'll not be long before I serve him with an ejectment for the the otherworld."—(Sensation.)

The prisoner here wished the learned counsel to repeat the words stated to have been used by him—a request with which Sergeant Byles complied.

The prisoner said this was the first time he had heard of any such evidence being adduced against him.

His Lordship said, it would not prejudice him, unless the learned counsel was in a condition to prove that he had used the words. The prisoner was quite right to ask to have anything repeated which he did not hear, but that was not the time for commenting upon it.

Sergeant Byles proceeded :—"Gentlemen, I shall call another witness before you, who, at the time of these distresses, will speak to other expressions on the part of the prisoner ; and, amongst others, to this :—Speaking of Mr. Jermy, the Recorder, and a gentleman of the name of Clark, a solicitor at Wymondham, the prisoner said, "D—n them, I will do for them the first opportunity I have."

It is very true both these expressions depend upon the verbal testimony of witnesses—evidence which is not so satisfactory as written evidence. Such things are apt to be misheard, misunderstood, misreported ; but it will be my duty to lay before you some statements which are in print.

[Rush here asked the name of the person to whom he was said to have made the former statement, alluded to by Mr. Sergeant Byles. The learned counsel said his name was William Frederick Howe, and that he was formerly a clerk to a gentleman of the name of Waugh.]

The passage which I am now about to read to you will not be subject to any of those observations which I myself have thought it right to make upon the verbal testimony of witnesses, because they are to be found in a pamphlet printed by the prisoner. Upon that subject there will be no doubt, for I shall call the person to whom the prisoner gave a copy of this pamphlet, and produce the copy that he gave; therefore, there will be no question that I have a right to call your attention to some expressions in this pamphlet. It purports to be a report of the trial, to which I have called your attention, at Norwich Assizes, in 1848—this time twelvemonth; and also a case (says the pamphlet), "*Jermy v. Jermy*, as to who is the right owner of the Stanfield Hall and Felmingham estates." Gentlemen, it will be convenient that I should here state to you, and it will be necessary to prove to you, that shortly after the death of the Rev. George Preston, some persons made their appearance as claimants to the estate; originally, I believe, a man named Larnier, and afterwards a person named Jermy. It would be foreign to this inquiry to go into the nature of the claims; suffice it to say, that they did make such claim. The passages to which I particularly invite your attention are the passages in which he speaks of Mr. Jermy, the Recorder. I find these passages at the bottom of page 5. "Even if the villain had behaved as he ought to have done, to have acted with common honesty, I should never have done myself much good; not half so much as if I had remained at Dalling."

This passage was at the request of the prisoner again read to him.

There is another passage to which I shall call your attention. I do not propose to read the whole pamphlet; but if the prisoner requires it, it shall be read, or any portion which he desires.

The Prisoner.—If one part is put in, I will have the whole.

Sergeant Byles.—Certainly, the whole shall be produced. I don't propose to read it now as a part of my statement. The other passage is, "But after all there is no reason why I should now be ruined in character by this villain, as well as my own property being sold up by him." Again, "This fellow has no right to the Stanfield property, and he knows it as well. His whole conduct in keeping possession, and taking the



name of Jermy, and his behaviour to those poor people who have a right to it, has been most villainous and disgraceful to any man who can have any pretensions to respectability, and which I should be most happy to prove when called upon to do so." The account of the trial is stated to be drawn up "so as to show who is the rightful owner of the Stanfield estate, and the means this fellow has taken to get into possession; why I have published it is, that some one who has money might come forward, and might see that justice may be done to this Mr. Jermy, who is the owner, and who is now out of possession for want of the means to employ counsel, and to have the matter brought to a trial. I do hope that some will come forward and oust this fellow, who has not half so much right to the property as I have."

Again. "That is why I think every thing has turned out for the best, if these poor people should be put into possession through any steps I have now taken, or am about to take."

Again. "There is one thing certain; if there is any truth in the Bible, such villany is sure to be overtaken, and that when it may be least expected."

Now, gentlemen, I will call your attention to the contents of this pamphlet, as showing you two things—the state of the prisoner's mind, and that he contemplated taking some steps with reference to the claim of these persons to the Stanfield Hall property; but I shall also put in a letter in the handwriting of the prisoner, in order to show his feeling towards the late Mr. Jermy. It is dated the 28th April, 1848, and it is written from the Angel Inn, at Islington, and addressed to his son. You will observe that the 28th of April is after the trial of this cause. He says in his letter:—

"I have at last got Jermy in a fix, and the rogue and villain knows it well; how he will act, indeed, will soon be seen; at all events, he now knows that if he ruins me I can him."

Rush asked the number of the document referred to? The learned counsel said it was page 19, in the list of documents number 1.

We have thought it right to furnish the prisoner with a copy of these documents, which will be read against him. These pieces of evidence, therefore, are in writing, or rather, one of them is in writing, and the other in print. Gentlemen, the case was tried in March, 1848. In May the prisoner became a bankrupt. And here I must tell you, that for some time before this period there had been living in the house with him

a young person of the name of Emily Sandford. Her father was, I believe, at one time, a clerk in a very extensive house of business—a person in humble and respectable circumstances; and this young person the prisoner engaged as governess to his children. Amongst other witnesses she will be called before you, and she will tell you that, in the month of October, 1848, about half a year after this transaction, she was taken by Rush to London. I am wrong, however, in that; she did not go up with him; lodgings were taken in Mylne-street, Pentonville, for her.

She will tell you that, on the 3rd of October, there was a meeting at the lodgings at Mylne-street, between Rush, the man named Larner, one of the claimants, a man named Jermy, one of the other claimants, and, I think, a son of Larner's. An agreement was there signed, and to the contents of it I shall call your particular attention. But the evidence of Emily Sandford, with respect to that transaction, will be confirmed by a letter in the handwriting of the prisoner; that letter bears date 2nd of October, 1848; it is a letter from Rush to a person of the name of Read. Mr. Read seems to have been the individual who was disposed to lend assistance to Mr. Jermy (the claimant) and Larner.

[Rush asked the number of this document, and was told by the learned counsel that it was 28.] It is dated from Felmingham on the 2nd of October, 1848, and is in these words:—

“ Dear Sir,—I expect to be in town to-morrow, instead of Wednesday, as I wrote to you; and as I have now got a lawyer who will do all in his power to have justice done to Mr. Jermy, I will at once let you and Mr. Jermy know how far I am disposed to assist him. You must, in order that I may do so, have Mr. Jermy up to town to-morrow (Tuesday evening). You, Mr. Larner, Mr. Larner's eldest son, and Mr. Jermy, must meet me at my lodgings, No. 2, Mylne-street, and I will at once tell you my plan, and the only plan that will ever give him his estates.

“ There is one point I *must* have observed, strictly to the letter, and that is, no one of us five but the lady who is going to find the money to carry my plan into execution, is to know what we are after, till I think proper. It will in no way interfere with the course your lawyer has taken, but it will materially assist it. I will explain all when I see you to-morrow night. You must have Mr. Jermy up, as I shall want him down in Norfolk to take possession on Wednesday; and if you and Mr. Larner think it advisable, after hearing my plan, Mr. Larner must

accompany me. You will be so good as to send into Mylne-street, Claremont-square, Pentonville, to say what time in the evening I may expect to see you ; unless Mr. Larner's son should be at so great a distance that he cannot meet us.

“ Trusting that God has hitherto ordered all for the best, I am faithfully yours,

“ J. B. RUSH.

“ P.S.—Above all, do not appeal to Mr. G. I would not have him know that Mr. Jermy is coming down to Norfolk for £500 ; he is a clever man, but not to be trusted in anything I have to do in this matter.”

I have read this letter to you at length, in order that you may see how far the statement, which you will hear from witnesses as to what took place at that interview, is corroborated by what comes before, and by what follows. I shall show you, that on the 3rd of October, the parties met together at the lodgings in Mylne-street. There were present, Thomas Jermy, Charles Larner the younger, and Rush. At that meeting, also, Emily Sandford was present, and she was pointed out to Jermy and Larner as the lady who would find the money.

Gentlemen, that interview resulted in a written agreement, to which I now beg to call your attention ; it is an agreement made on the 3rd of October between Jermy (that is, Thomas Jermy, the claimant), John Larner, Charles Larner, and Rush. It is an agreement that they shall let the Felmingham Farms to him for the term of twenty-one years, from the 11th of October, 1848, at the rent of £230. I do not propose to read the whole agreement now, but it will be read at length presently. He, on his part, agrees that he will, as soon as he conveniently can, after signing this agreement, put Thomas Jermy, the claimant, into possession of the said estates, and that he will do all he can legally to assist him in maintaining possession. Then there is a further agreement, that another agreement like this should be signed, and all I need say about that now is (not to encumber the case with any unnecessary statement), that a subsequent agreement in terms very much the same was signed between the parties.

This agreement being framed, and Rush being at that time in possession of the Felmingham Farm, it was agreed that Thomas Jermy (the claimant) and Larner should go down to Felmingham Farm, and be put

in possession. Accordingly, Thomas Jermy and the elder Larnier, I think, on the 4th October, proceeded to Norwich for Felmingham. I believe Rush went with them, though not in the same carriage, yet in the same train ; and that all went down together to put this agreement into execution, as far as taking possession goes, on the 4th of October, 1848 ; on the 5th of October, the next day, Emily Sandford, by Rush's directions, returned from London ; she goes down to Norwich, and from Norwich to the Potash Farm.

The next date to which I must call your attention is the 10th of October. On the 10th of October, Emily Sandford and a boy named Savory proceeded in a gig from the Potash Farm, which is a short distance (about a mile one way and rather more the other) from Stanfield Hall. They proceeded part of the way there, and they came to a sort of a ditch or dyke, of which you will hear probably something more in the course of the case. That stops the pony and gig, and it is late at night and dark. Rush and Emily Sandford (she being unwilling to be left in the gig) proceed towards Stanfield Hall. She remains at the bridge, which is over the moat that surrounds part of Stanfield Hall, and he goes in, in order to see Mr. Jermy. What occurred upon that occasion I am not in a position to shew you, but Rush came out and rejoined Emily Sandford. They got into the gig again and went towards the Potash Farm, and eventually, I believe, he took her, or rather the boy Savory took her, to the Bowling Green Inn, in Norwich.

It will be important for you to bear in mind that this interview between the Recorder and Rush took place on the 10th day of October last. First of all, she went to the Bowling Green public-house, and afterwards went to the Swan, and afterwards to some lodgings kept by a person named Stacey, in Theatre-street. When she was in the lodgings at Stacey's, Rush produced to her a paper to sign, that paper being dated the 10th of October.

Now, gentlemen, you will observe I have already told you, that Rush's interest in this farm would expire on the 30th of the then next month ; and the agreement which Emily Sandford says was produced to her, is dated the 10th of October. She hesitates to sign it ; he tells her that it is only a copy, and eventually she puts her signature to it.

Gentlemen, I beg to call your attention to this document ; it is as follows :—

“ Memorandum of an agreement, dated the 10th day of October, 1848,

by me, Isaac Jermy, Esq., Recorder of the city of Norwich ; that is to say, I agree for myself, my heirs, administrators, or assigns, to let to James Bloomfield Rush, of Felmingham, his heirs, administrators, or assigns, all those two farms lately occupied by Mr. John Rush and the said James B. Rush, for the term of twelve years, from Michaelmas, 1848, at the annual rent of £300 per annum ; and that a lease and counterpart be prepared at the expense of the said James Bloomfield Rush, his heirs, administrators, or assigns, with the same covenants as are now contained in the leases to the aforesaid John Rush and James Bloomfield Rush ; and that a clause in the said lease is to be inserted, that my son, Jermy Jermy, is to have the right of shooting over the said farms—that he is to have a sitting-room and bed-room provided for him when he requires the same in the shooting season, and to be boarded in the farm-house, and to pay what is reasonable for the same. In witness hereto, I have this day set my hand.

“ Witness, Emily Sandford.”

“ I. JERMY.”

This refers to the Felmingham estates, and is, you see, an agreement for a lease of them. I shall be able to show you that Emily Sandford was afterwards dissatisfied with having signed her name to this agreement. I shall shew you that she wrote to Rush, and kept a copy of her letter or answer. I shall shew you that he remonstrated with her about writing on such a subject, and destroyed her copy by tearing it to pieces. On Saturday, the 4th of November, Emily Sandford goes back to Potash Farm, but, in the meantime, Jermy and Larner, who had been down at the Felmingham Farm, not much liking, I suppose, to stay there and do nothing, returned to London. They did return to London against the will of Rush, though, I believe Rush gave them a sovereign towards the expenses of their journey back. On Tuesday, the 21st of November, Rush produced to Emily Sandford some more agreements to be signed.

Now I do not propose to read the whole of these agreements to you, but you will find another of them dated the 10th of October, and, I think, there are two dated the 21st of November. The one which is dated the 10th of October purports to be between Rush and Jermy. Jermy, by that agreement, agrees that Rush shall have £5,000 on the Potash estate for three years beyond the time mentioned in the mortgage deed, at 4 per cent., and purports to be signed by Jermy and by Rush. That is produced to Emily Sandford, and she signs it. They are repre-

sented to her to be copies. There is another agreement produced and signed under similar circumstances, by which Mr. Jermy is made to agree to cancel the mortgage deeds altogether.

Gentlemen, we are now approaching the verge of the transactions to which your attention will be more particularly called. I only made this preliminary statement in order that you might see, as clearly as I can make you see, the situation in which the parties stand. I shall show you that, about this time, the prisoner was in the habit of going out at night after dark. We are now, you know, in the month of November. I do not propose to trouble you with any statement of all the events—with any details of what took place before the night in question. I must, however, state thus much, that it will clearly appear before you, that on the Friday night, the 24th (not for the first time), after tea, he went out for something, and continued out very late. There are many circumstances, if that should be inquired into, which may possibly be deserving of your attention. But this case is so full of minute details that, without great care on our part, I shall be apt to overburden it with that which will be entirely superfluous; that is the only reason why I do not trouble you with these details.

He went out, I say, on Friday, the 24th, after having gone out on several occasions before. He went out, also, on the night of Monday, the 27th. But I must mention one or two of the circumstances that occurred on the Monday. There was to have been, I believe, on the Tuesday night, a concert at Norwich, and he had taken a family ticket to go to that concert. On the Monday, his son, who was living in the Potash Farm with him, left, to go to Norwich, and his son's wife also left. They went first of all, I am told, to Felmingham. There was a female servant in the house, and, for some reason or other, she also went; leaving, on the Monday night, the only persons in the house, properly so called, Rush and Emily Sandford. Rush, on the Monday night, after tea, went out as usual, and was out some time, and returned late.

Now, gentlemen, I have brought you to Tuesday, the 28th. I shall be able to show that on that day, I think about half-past four in the afternoon, Rush inquired of a person of the name of Cooper whether Mr. Jermy was at home. Rush dined that day at the usual hour. I believe he asked what time dinner would be ready, and he observed, "There is just time for me to go into the garden and fire off my gun." He accordingly went into the garden, fired off his gun, and returned to dinner.

At half-past four he had inquired whether Mr. Jermy was at home. At the usual hour they sat down to tea, Emily Sandford and he alone in the house, for the charwoman, who was ordered to come, came about six o'clock in the morning, and left about one. As they were sitting at tea, Emily Sandford observed the prisoner to be a good deal agitated. He said, in answer to her inquiries, "I have been thinking a great deal about the story which we read the other day of the Scottish Chief (alluding to the well-known story of Robert Bruce, before a celebrated battle), where he lay upon his back and saw a spider, which had suspended itself from the ceiling, and swinging backwards and forwards, with a view, apparently, of reaching the beam. The insect tried six times, and succeeded the seventh. The Scottish Chieftain said, 'I have tried several times and have failed; this insect has succeeded the seventh time, and I will try again, and I shall succeed.' He did try, accordingly, and proved successful." \*

I am told it will be proved that the prisoner said, "I have tried several times and have failed; the next time, perhaps, I shall be successful." Emily Sandford expressed her alarm, and said, "What can this be? it must be something more than poachers" (for he said he had been out after poachers).

Rush said, "I shall like you better if you don't ask me now."

She observed him to be extremely agitated, and at one time, in the course of the tea, he was in tears; when tea was over, he left the room and went up stairs into his bedroom. He afterwards came from his bedroom, and went out between seven and eight o'clock. She heard him go out, but nobody saw him. I would rather you should hear from herself any expressions which may have taken place about his going out. This, gentlemen, was between seven and eight on the Tuesday night.

This model (pointing to a model on the table) represents the Potash Farm, and will show the position of the various rooms through which the prisoner is supposed to have gone. In going from Potash Farm to Mr. Jermy's mansion, which lies, as I have told you, at the distance of

\* It is somewhat remarkable that the history of Robert Bruce affords an instance of an assassination resembling that committed by Rush. Robert Bruce, in 1306, invited John Comyn, of Badenock, an opponent competitor to the Scottish Crown, to meet him in private conference in the choir of the Minorites church, at Dumfries. Comyn went, and during the interview Bruce suddenly plunged his dirk into the breast of Comyn. Bruce's followers rushing in, completed the murder, and also slew Comyn's uncle, who had come to his nephew's assistance. An ancient poet thus accounts for the death of Bruce's victim:—

*Causa suae mortis est vetus discordia fortis.*



about a mile one way, and rather more another, he would have passed first of all through the yard, which was covered with straw in its ordinary condition. He would then have passed through what is called in this county a *loke*, which is, I am informed, a road from the homestead to the field. That *loke* was littered with straw. I do not think there is anything which would prejudice the prisoner in the fact of the *loke* having been littered with straw, because I understand it had been littered before.

The nearest path towards Mr. Jermy's house was by the side of some fields over the bank. But it will be extremely necessary for you to bear in mind that a portion of that path, which never had before been littered, was then littered with straw by the prisoner's direction; and that the straw ceased where the green sward began. Thus the prisoner could walk from his house towards Mr. Jermy's dwelling, first of all through the straw-yard, then along the littered *loke*, then along the litter which had been laid by the side of the fields, until he got to the green sward; and then he would be upon a hard gravel in front of Mr. Jermy's dwelling, where no trace of footsteps could be discovered.

Now, gentlemen, at this time, the late Mr. Jermy (dinner being over) was sitting in his dining-room. (I do not propose to trouble you with a model, but I shall call your attention to it presently.) His son and his son's wife had left the dining-room, and were in the drawing-room. They were about preparing for tea, and, I believe, for a game of *piquet*—the cards being upon the table.

The elder Mr. Jermy, into the circumstances of whose death we are now inquiring, left the dining-room, and proceeded first of all through the staircase hall, then through the entrance of the hall to the porch, which is in front of the mansion. I need not state to you the circumstances, which will appear in evidence; but it will be perfectly clear that the moment he reached that porch some person very near him, probably standing between the porch and the window, where there were marks of heels, presented a gun, or more probably a pistol, to his breast. It was loaded with slugs, and it shot him instantly through the heart, being discharged close to him. It nearly blew the heart to pieces. The slugs were lodged in the muscles and integuments of the body. Several ribs were broken, and the deceased fell backwards upon the door mat and expired.

Immediately afterwards, at the side door of that mansion, entered a



man of the size and height, shape and carriage of the prisoner. I have told you before that the prisoner was in the constant habit of coming to this house. Indeed, at one time he was in the habit of going in without rapping. At the side door, then, at which the prisoner usually entered, came in a man with a cloak, and armed with fire-arms. Whether those fire-arms were a short gun or guns, or whether they were a brace of double-barrelled pistols, I will not undertake to say: I decline to tie myself to any hypothesis on that subject. It is very difficult for us to discover; I have a notion what they were; I should suppose them to have been a brace of pistols, but we cannot tell; neither is it at all important to inquire. One witness will tell you that they saw one of those guns or pistols; another will say they saw two. The man went along the passage, and, as he was going along, he dropped two papers, which I hold in my hand, and to the contents of which I shall beg presently to direct your particular attention. He had to pass a side passage, where he saw the butler, a man named Watson, whom he pushed with his elbow as he passed. He then walked to the door that leads into the staircase-hall. Mr. and Mrs. Jermy the younger had heard the report of a pistol outside of the door. Young Mr. Jermy was proceeding towards the part of the house that the circumstances required. The doorway was opened, and when Mr. Jermy was going through the door from the hall on one side, and the armed man, whoever he was, was going into the hall on the other, they met. The pistol again was presented exactly at the breast of young Mr. Jermy, and passed through the lappel of his coat, scarcely making any hole at all. He also fell down in the hall.

Mrs Jermy, at this time had remained in the drawing-room. She immediately came out into the hall, and passed over or by the dead body of her husband. When the female servant, Eliza Chestney, who will be called as a witness before you, heard her mistress scream for help, she ran up to her, and taking hold of her by the waist, called out, "Oh, my dear mistress!"

At this moment the armed man was seen again coming out of the dining-room, or in the direction from the dining-room. These two females were opposite to him at the end of the passage; he fired the gun and hit the leg of the servant, he being at no very great distance. The gun or pistol would have been perhaps, a little inclined. Another shot hit Mrs. Jermy in the arm; she now lies upon a bed of suffering; therefore it is not possible for me to bring her as a witness before you.

The man then proceeded along the passage, and went out again by the

same door, but not until some observation had been made by the servants, to which I shall presently call your attention.

Gentlemen, about nine o'clock Rush's knock was heard at his own door. Emily Sandford went to the door to open it, but did not see him come in. He went up stairs into his own room, and after a short interval returned again without his boots, his stockings about his legs, and, I think, with his coat off. He said, among other things, to Emily Sandford (I do not propose to repeat the whole conversation to you), "if any inquiries should be made, you say that I was not out more than ten minutes." He told her to make haste and put out her light, and go to bed as soon as she could. She then went up stairs and asked where she was to sleep. She was told to sleep in her own room—for the first time, I believe, for a considerable length of time; for, I believe, amongst other misfortunes incurred by this young lady, it will be but too apparent that there was an improper connection between her and Rush.

Now, gentlemen, I must trouble you to go back with me for a minute or two to Stanfield Hall. In consequence of what the servants saw and said, messengers were immediately dispatched to Norwich for the police, and they were at once sent to Rush's house. Several of them were there and watched the house at intervals, to take care that nobody left it. The surgeons came to the hall, and the dead bodies were carried into the dining-room. And the surgeons will give you some important evidence as to the mode by which they came to their death, and the distance from which the shots were fired. The policemen reached the vicinity of Potash Farm somewhere about two or three o'clock.

Whether the prisoner slept that night I know not; but about half-past two in the morning, he rapped at Emily Sandford's door, and desired to be let in. He then said—"Now you be firm, and remember that I was out only ten minutes last night."

She could get no information from him; but he said she would hear something in the morning. She took hold of his hand, and observed that he trembled violently. She also was in a state of the utmost alarm having no conception of anything having occurred like what I have been detailing to you. She began to tremble violently, so much so that he said he thought she must have the ague; and he went and fetched a great coat to lay over her bed.

The police continued on the watch till towards morning. The first person they saw came down from a place behind the house (for he did not

properly sleep in the house); this was the boy Savory. First of all they went and apprehended him.

There are some statements made between Rush and the police which I think, are deserving of your attention. I am told that he himself described the hour at which this transaction took place—no person having before suggested it. But with respect to evidence of that kind, I should rather you should hear it from the policemen that state it positively than myself; it is certainly not impossible that something may have been dropped by some of them about the hour, though I am told that it is not so. Gentlemen, they searched the house; they found a closet in which were two guns loaded, one of them with a barrel shorter than the other; they also found a lantern. No lantern, however was seen upon this occasion; but evidence will be brought before you to show that the lantern was seen late at night on a prior occasion, upon the grass before Mr. Jermy's house. They found two cloaks, and one of these cloaks well deserves your attention. One of them had been formerly a woman's cloak, and had been dyed black, it being before of another colour. It had, in its original state, a hood, but that had been converted into a cape. They also found some bullets, some shot, a wig with false whiskers to it, and other things, with the enumeration of which it is not necessary that I should trouble you.

Now, gentlemen, I beg to call your attention a little more in detail to what took place in the hall. I did not interrupt the course of my narrative before to state to you particularly what the inmates of that place will say. I shall be able to call before you the girl who was shot—Chestney. She is unable to stand, or walk, but arrangements have been made by which she will be brought before you. Gentlemen, she saw the man that fired. There was a light in the dining room behind him, and I think it will appear that there was another light also. She does not pretend to have seen his face, but she knew the prisoner perfectly well; she knew his shape, his size, his general appearance, and his head; and she will tell you whether she believes now, or believed then, that the prisoner was the man.

In addition to that I shall call the butler, Watson, whom he<sup>r</sup> passed by, and whom he touched. I had rather not state before you what that butler will say. He will tell you however, whether or not this was Rush. He did not see his face. But I will also call before you the cook. Now the cook was standing in the kitchen, exactly in the position described

to you. She saw the man pass, and she not only noticed him, but she particularly took notice of the cloak that he had on, and the cape of that cloak. She also will tell you whether Rush was the man. What they said at the time is not evidence, but what they did at the time deserves your attention. In consequence of their directions, the Norwich police were sent to Rush's house. The direct evidence, therefore, against the prisoner, will be the testimony such as I have described, or rather such as you will hear, of Watson, of Chestney, and of Read, the cook.

But now, gentlemen, I beg to call your most particular attention to another piece of direct evidence, and it is these two papers that were left in the hall. They are written in a large hand, as you will perceive, if not in a disguised hand. I will read them to you. They are both alike, or nearly alike. I shall particularly ask your attention to the substance upon which they are written—apparently a piece of an outside cover of an account book, or something of that kind.

The words are, "There are seven of us here, three of us outside, and four of us inside the hall, all armed, as you see us two. If any of you servants offer to leave the premises, or to follow us, you will be shot dead; therefore, all of you keep to the servants' hall, and you nor any one else will take any harm, for we are only come to take possession of the Stanfield Hall property.

"THOMAS JERMY, the Owner."

Gentlemen, after what I stated in the opening of my address to you, you know who Thomas Jermy is, and you know that Thomas Jermy had been down to the Felmingham Farm. It is very true that he had gone back to London, and the other man that was with him—Larner. There were two of them there, but whether Mr. Jermy knew that they had returned to London or not, I cannot undertake to say. I do not know whether he knew or not; I doubt if he did, for they certainly had not returned to London very long. Now, by whomsoever this was left, the object of it unquestionably was to blind; it was intended to make the parties in that house believe that the perpetrators of this outrage were Thomas Jermy and another man. I am afraid that that rather means Jermy and Larner.

Gentlemen, I will call before you that Thomas Jermy. I am told he is an inoffensive man, verging upon seventy years of age; and you will learn from him, that so far from having anything to do with the transac-

tion, he and Larner had both returned to London. Whoever, therefore, put this paper down, intended to throw the blame of the transaction upon an innocent person.

It begins, also, with another blind. "There are seven of us here." Gentlemen, you will learn in the course of the case whether there is any pretext whatever for that. It says, "We are all armed, as you see us two." You will learn, also, whether there is any pretext for that, whether there is any ground for the supposition, that more than one person was there; and whether the words "us two" are not meant to refer to Thomas Jermy and to Larner.

Now, the man threw these two pieces of paper down in the Hall, and I will call a person intimately acquainted with the handwriting of the prisoner. I believe the prisoner, in the earlier part of his career, has been an auctioneer; and the evidence which I shall give you is not the ordinary evidence of handwriting, but the evidence of a person who has been accustomed for hours together to see him write, and to copy from his writing. He will tell you, that though this is in a disguised hand, he believes that it is in the handwriting of Rush.

In cross-examination, the prisoner will be at liberty to ask his reasons for his belief, and it will be for you to judge whether those reasons are satisfactory. This paper, therefore, will be direct evidence, on the ground that we propose to prove Rush's handwriting; when I say prove—you have sat upon juries before, I dare say, and know that it is not customary to call a witness to swear positively to handwriting. If your own handwriting were produced before you, some time after it was written, you could, perhaps, only say that you believed it was yours. But there is another piece of evidence—you will please to observe that these two pieces of paper appear to be part of the same book. Among the documents found in the possession of the prisoner, are two books, which will be put into your hands, and which you will find are precisely the size of this book. The two books found in the prisoner's possession bear at the bottom of them, the inscription, "Mercantile accounts by single entry—Jarrold."

Now, I shall call Messrs. Jarrold before you, and they will prove that they are in the habit of selling books of this kind, in sets of three and two. The sets of two are smaller books, and we may, therefore, dismiss them. But I will show you the sets of three, in order that you may see whether the fact is not consistent with my statement. They will tell you

that the marble covers of these books are not of the same colour; they are sometimes of one colour and sometimes of another. They will tell you that this outside sheet is thicker than usual; and you will say whether this outside sheet does not, in this respect, correspond to those sold in sets of three. You will observe that the two books found in the prisoner's possession have a white label upon them; and if you look at that found in the hall, you will see the place where a white label has been scratched off. It corresponds in size with the label upon the others, but as it is scratched off, we cannot read it, and, of course, cannot tell certainly whether it is one of the same. There will also be some evidence with respect to the paper with which the insides of these covers are lined. The second observation, therefore, with respect to the papers dropped in the hall, is this: I will give you evidence to show that the words were written upon the cover of a book like that which Rush had; but which book, for some reason unexplained, is absent.

What is become of the inside of that book, I do not know. Emily Sandford will tell you that when she went up into his room the second time, there was a bright fire burning in his grate, which would give him the means of disposing of the inside of the book; and I may as well mention, with regard to his boots being missed, that they were, as well as the paper, capable of being entirely destroyed by an ordinary fire.

Gentlemen, this paper will be the second branch of the direct evidence against the prisoner. Now, it is evident that the person who did this deed must have been a person who knew the house; undoubtedly, it was a person of the shape and size of the prisoner; and it will be clear to you that the prisoner was from home at that time.

Gentlemen, I am afraid that when the prisoner comes to make his defence, you will require a satisfactory answer to this question—Where was the prisoner during the time he was absent from home on that and the previous occasions? I shall say no more to you on the subject of the motive or of the pretence. I shall call before you Mr. Jermy and Mr. Lerner to exculpate themselves, if they are innocent, or inculpate themselves, if they are guilty; and you will have to ask, Upon whom does the suspicion rest? But I shall also call before you a very important witness—the young woman I have alluded to—Emily Sandford.

I should not be doing my duty to the prosecution, if I did not state to you the circumstances upon which I rely for the confirmation of her testimony. You will learn from her that she stated that Rush had told her

that he kept his papers in a secret place in the floor of the closet, known only to his mother and himself. In consequence of this statement, a search was made in the floor of that closet, and the papers were found. I shall show you that the circumstances are corroborated by a letter to which I have already alluded, written to Read, relative to the interview which took place in Mylne-street, as well as by the agreement which was there signed.

But there is another fact which I might state. When before the magistrates, she deposed, upon her earlier examination, a portion, but not the whole, of what I have now stated. In particular, she gave one of the most important facts—that Rush had desired her to say that he had been out only ten minutes. I shall show you that Rush was excessively incensed against her for making that statement—a statement which, if it were true, went to his life, and would well account for any degree of exasperation which he might evince. You will learn what his conduct was ; and I will afterwards show you that although he knew she had made this statement against him, he wrote a letter to her, and you will have to judge whether this letter be or be not consistent with the suspicion that Rush knew she had been swearing against him that which was most material. The letter is dated from Norwich, and begins thus :—

“ I am sorry I used the language I did when I was last with you, but I hope you know enough of my temper to believe me when I tell you that you have nothing to fear from my bad wishes, or from what I then said. Whatever be the result of this unjust accusation against me, you will always have my best wishes for the health and happiness of yourself and of *our* child. Write only a few words to acknowledge the receipt of this, for we are not allowed to say more.

“ JAMES B. RUSH.”

That letter was intercepted, and will be laid before you.

Another circumstance will be proved to you. When the man, whoever it was, fired at the two women, the first person was wounded in the leg ; and I told you before that when that shot was fired, the pistol or gun might be a little inclined. At that spot was found a ramrod. Now that ramrod is too short for either of the guns that were found, which do not want ramrods. It would rather appear to belong to a carbine or large



pistol, either single or double barrelled ; but it may have belonged to a pistol, or it may not ; and it may have been left designedly.

I beg to repeat again what I said before, that it is immaterial with what instruments of death these transactions were accomplished. I will show you what was found, and give you all the information which it is in our power to lay before you. The only observation I have to make is this : there is a witness who, under ordinary circumstances, should have been called before you—I mean the unfortunate Mrs. Jermy. I will prove to you that she is now in a state in which she cannot be removed without danger to her life ; and upon mature consideration it seems to us doubtful whether any statement of hers would, even under recent Acts of Parliament, be evidence. Under these circumstances, therefore, you have no evidence on the part of Mrs. Jermy, and it will be for you to say whether or not we satisfy you. This, gentlemen, is the case.

But I am reminded by my learned friend that there is another observation which I ought to have made. I have told you that the man that fired the shot had a cloak on. I shall show you that there was such a cloak in the possession of the prisoner. I cannot tell you how Rush was dressed when he went out, and when he returned, and for this reason : Emily Sandford was in the parlour, and he did not come in until she, having opened the door, had returned back again. I shall be able to show you that, upon another occasion, he took active precautions that he should not be seen.

Now, gentlemen, this is an outline of the case. It consists of two species of direct evidence, and it consists also of that which sometimes is the only evidence which in cases of this kind can be brought before a jury—circumstantial evidence ; because, when people meditate crimes like this, of course they take care to surround themselves with all the circumstances they can which will conduce to secrecy. Therefore, in many of these cases it is impossible to lay any direct evidence before the jury.

Gentlemen, you have heard a great deal about this case. You will, I am sure, dismiss all you have read and heard from your minds, and attend only to the evidence. The prisoner has a right to require of you that you should sift the evidence minutely, and that, if you entertain, not a fanciful and capricious, but a reasonable and solid doubt, that you should give him the benefit of it. But, gentlemen, you have your duty also to discharge to the public. If you have no reasonable doubt,



society, which otherwise would fall back into its original barbarism, expects that outrages like this should be repressed by the iron hand of the law.

This is a question of unusual publicity. The eyes of this great assembly, and I may say of your countrymen, are upon you. But that, gentlemen, will in no way influence you, further than to make you more anxious to discharge your duty, and to adhere to the golden rule of human conduct, which, believe me, is this, "To do, upon all occasions, your duty, and to leave the consequences." The learned serjeant then concluded at a quarter to eleven o'clock, having occupied the attention of the court rather more than an hour and a half.

Rush now applied for the witnesses for the prosecution to be sent out of court—more especially Mr. Cann the solicitor.

His lordship, however, objected, inasmuch as Mr. Cann was a solicitor for the prosecution; and advised that Mr. Cann should be the first of the witnesses examined.

It was, however, decided that it was necessary first to prove the accuracy of the models, and the architect and surveyor was accordingly put into the box.

As the whole evidence, voluminous in itself, and increased in bulk by the extraordinary cross-examinations and interruptions of the prisoner, fully bore out the very clear opening statement of the learned serjeant, such extracts only are given here as may be likely to add to the elucidation and interest of the narrative.

The proof of the actual murder and the identification of the prisoner were as follow :—

James Watson deposed that he was footman in the service of the late Mr. Jermy, at Stanfield Hall. He had lived there since May last. He knew the prisoner Rush, who was often at the Hall, and used to enter by the side door. There was a bell to the door, but he used to come in without ringing; and he generally went into the servants' hall. Witness had also seen him in other rooms. Rush knew the house well. (The model of the hall was now produced, and the position of the passages, rooms, stairs, &c., explained by the witness and counsel.) The usual dinner hour was six o'clock. Witness did not know, on the evening of 28th of November, who left the dining-room first. Mr. Jermy, senior, was at that time living in the house, and young Mr. Jermy and his wife and Miss Jermy, a daughter of Mr. Jermy, senior, whose age was about

fourteen. There was a groom living in the house, and six female servants. The cook's name was Read ; Chestney was housemaid. There was a lamp with a reflector on a table in the staircase-hall, on the evening of the murders. There was also a lamp at the end of the long passage. There were in the dining-room two wax candles ; but no light in the entrance-hall. Besides a light in the staircase-hall, there was a fire. After dinner, Mr. Jermy frequently went out of the outer porch door for a short time. On the evening in question, witness was in his pantry, about a quarter past eight, when he heard a report at the front of the house near the porch. The pantry window was near the porch. When he heard that report, he went out of the pantry a few feet, to the spot where the two passages meet. Could then see the door leading into the staircase-hall. While there, witness saw a man coming from the direction of the side door. He passed witness, and was about three feet from him when he did so. While passing, the man moved his left elbow. Witness saw the man go to the staircase-hall, and then observed the door open. Saw Mr. Jermy open it ; he was coming from the staircase-hall towards the passage. The man was then about three feet from the door. Witness saw the man then point a gun or pistol at young Mr. Jermy, and fire it. Mr. Jermy immediately fell down backwards into the staircase-hall upon the mat. Witness returned back to the pantry, and, while there, heard a woman's footsteps running towards the lobby, from the servants' hall ; she was screaming. Witness then heard two more discharges of fire-arms, very quick, one after another.

Upon hearing these reports, witness went out of the pantry towards the door of the staircase-hall, and then saw Mrs. Jermy go towards the back staircase. She was running. Witness also saw Chestney lying in the lobby, opposite the staircase-hall, and about two feet from the wall. On that wall there still existed the marks of the discharge of fire-arms. Chestney complained to witness, and he dragged her to the back staircase. Did not see the man again, and did not know which way he went out. The old gentleman was in the outside porch, dead, with his head towards the inside door. He found him there about half an hour after. Having procured the assistance of Mr. Gower and his two sons, witness searched for old Mr. Jermy, and found him lying on the mat in the porch ; he was then dead. The wound was on the left side. Witness saw the man, when inside, drop two papers in the long passage, and afterwards saw one picked up. They were like those produced. The man was

low in stature, and stout. Witness could not see his face, as he had something over it. Could not see what it was; but there was light enough to see his gait and general appearance. He believed it to be Rush.

Rush objected to the way in which the counsel put his question respecting the identity of the assassin; but his lordship said he thought had been put very properly.

Rush.—Then I hope your lordship will not find fault with some of the questions which I shall put.

Examination of Watson continued.—He had a cloak on, long enough to cover his arms. Witness saw two weapons, but could not say what they were; it struck him at the time that they were large pistols.

Cross-examined by prisoner.—He was putting the plate away when he heard the first report; he could not see out of the window of the pantry into the front, but he could out of the window of the passage. Did not look out of the passage window. After hearing the report, left the pantry immediately. Had no plate in his hand when the report was discharged, but might, perhaps, stay a few seconds before leaving the pantry. The man, when witness saw him, was walking fast, but had not then turned the corner towards the lobby; he was, however, about to do so. Was five or six feet from the pantry door when he saw the man turning the corner. Witness did not remember if the cloak had a cape to it; did not pick up any paper that night, and did not see a servant do so. A few words were put to him in the brown parlour the same night, but very little of what he said was put down. Could not remember Captain Ives and his servant being there. There were several others; perhaps five or six. Could not remember who put the questions nor who wrote down the answers; in fact, he did not know them. Did not remember if anything was said that night about the man's having something on his face. Remembered saying that, first on the next day, in the presence of the prisoner. Witness saw Mr. Cann on the Wednesday, but did not remember what he said to him. Did not remember hearing any one say anything about a mask before he gave the evidence before Rush. Did not see the man's legs, and had not been shown the cloaks that had been taken from Potash before he was examined.

[Rush now put several questions relative to what the witness had said before the magistrates, but the judge informed the prisoner that if he persisted in this way he must put in the depositions, and then the lea-

counsel would have the last words, as he would be entitled to reply.]

Rush replied that he certainly should put them in, as he intended to use them in his defence.

Watson's depositions both before the magistrates and the coroner were then put in and read.

Cross-examination by the prisoner continued.—He did not see the man take the arm from his cloak when he shot young Jermy. He did not know that Mrs. Jermy was wounded when he saw her. He saw her going towards the back staircase. He did not know where Anna Holmes was at the time, or the other servants. He saw none of the maids after hearing the reports, except Blanchflower, the nursemaid. He was in the passage when she called for some hot water, and she was in the nursery. The window of the nursery looked into the stable-yard. He saw her when he carried the hot water, but not before. He came down directly after he had carried the hot water. He did not see the man after he fired at Mr. Jermy and went into the staircase-hall. He might be a minute or two leading Chestney into the hall on the back staircase. He believed it was after he was at the foot of the staircase that he fetched the hot water. He did not remember seeing any one afterwards. He saw a curly wig at the coroner's inquest. It did not resemble the head of the man in the passage. He had said before that he did not know what the man had on his head. He did not remember to have told anybody that Chestney's description of the man's head was incorrect. It was about a quarter-past eight when he heard the first report. He did not remember any one being there when old Mr. Jermy was found. A gig came up at the time, but he did not know who was in it. He knew it was about a quarter-past eight when he heard the report. He spoke from his own knowledge, and not from the statement of any one else. He did not see Emily Sandford till the evening after the murder; she was then in the cook's pantry. He did not remember any one being with her. He did not see her in his pantry. He should have known it, if she had been there any length of time. He did not remember speaking to her, nor did he recollect hearing her speak to anybody else. He did not remember seeing her since that day.

Prisoner.—Remember! you are on your solemn oath. Will you swear before God that you have not seen her since that day?—Witness—I do not remember. I didn't see the man's hands, and cannot say whether

they were up or down. I saw the fire-arms, and it occurred to me that they were pistols. When the man fired with one arm, I do not know where the other arm was. Mr. Jermy had told me that he would not see you about five weeks before the murder. I do not know how often you came to the house between that time and the time of the murders. I know you came several times. I cannot swear that you had been more than four times. I recollect your being there the Sunday before. I do not think you could come without my seeing you. I do not know what servants were out of the hall at the time of the murder, or any young men being with them at the time. I had not heard of any books being circulated in the neighbourhood about law transactions between Mr. Jermy and yourself. Mr. Jermy never said anything to me about it. I have never heard about your being turned out of the place by Mr. Jermy. I do not recollect a man being dragged out of the fields and taken to the hall, and kept there till Mr. Jermy came home. I do not remember your being at the hall on the Tuesday before the murder.

By Mr. Sergeant Byles.—The night of the murder was very dark and windy. I do not know upon whom the wig was placed at the inquest.

The prisoner asked if he might comment upon the discrepancies between the witness's present statement and that on the depositions?

The judge said he had an undoubted right to do so, though he laid himself open to the possibility of counter-observations being made, and the similarity of the two statements being pointed out.

The witness Eliza Chestney was here brought into court on a small couch; the witness-box was removed, and the couch occupied its place. She had been brought on the previous day from Stanfield, on the shoulders of several men, and had been since staying at the house of Mrs. Watson, Castle Meadow. Witness looked pale and weak, but evinced no sign of tremulousness in giving her evidence. She was attended by Mr. Tunaley and Mr. Nichols, who occasionally gave her medicine.—She said: My name is Eliza Chestney; I was housemaid in Stanfield Hall in November last. On the 28th of November I was in the servants' hall about eight o'clock; I then heard a gun fired, which was followed by another discharge, and then a groan. I went into the passage which leads towards the staircase, when I met my mistress, Mrs. Jermy. She said, "Watson! Watson! Eliza! go to Mr. Jermy!" I took hold of her waist with my left hand, and taking hold of her hand with my right, I said, "My dear mistress; good God, what is the matter? For God's

sake don't go." She did not speak, but looked wild. We went down the passage together. When I got as far as the doorway of the staircase-hall, I saw Mr. Isaac Jermy Jermy lying on the floor; I saw a man seemingly coming from the dining-room door. He had either a short gun or a pistol in his right hand up to his right shoulder; he levelled the instrument and shot me. I did not fall directly. Another shot followed directly after, when I saw my mistress's arm twirl in the air. My mistress then ran up stairs and left me. I twisted round several times, and fell down. I gave three violent shrieks, and said, "Now I am going to die, and no one will come to help me!" I remembered no more until I awoke at the bottom of the staircase. I found myself seriously wounded in the leg, near the hip. I saw the head and shoulders of the man who shot me. The head was flat on the top, and the hair was bushy at the sides; and he had wide shoulders. I formed an opinion at the time who the person was. I had no doubt upon the subject.

Counsel.—Can you say who that person was?

Witness.—That man (pointing to the prisoner). I had seen Rush several times at Stanfield Hall, in the same passage. I did not observe anything about the man's dress. When I first saw him he was going towards the porch door; he was then sideways to me. He turned and saw me. When he shot me, he was about a yard from the dining-room in the staircase-hall. I was standing in the doorway; I saw the whole form of the head and shoulders, but not the face. I know no one in the habit of coming to the hall but Rush, having a similar appearance.

Cross-examined by the prisoner.—It was about eight o'clock when the shot was fired, or perhaps a little after. A few seconds (perhaps ten or twelve) intervened between the two first reports. I do not remember to have said that one shot came immediately after the other.

(At the prisoner's request, the depositions of this witness before the magistrates and coroner were then read.)

Cross-examination continued.—I might perhaps have said that one shot followed the other immediately, but I was in too much agony to remember distinctly. When I was in the servants' hall, and heard the first and second report, Reed, the cook, was with me. I do not know whether she got up when I did. The door leading into the passage from the servants' hall was then open. I might probably have heard any one in the passage, unless they were walking very light. I did not hear any one walking in the passage after the first report. When I heard the first report I sat quite still and said, "How silly," from the supposition that

it was the servants. I was sitting by the fire at the time, and did not get up before I heard the first report. I left Reed with the other servants. I do not know how long the other servants had left the hall before I heard the first report. Holmes, Mary Clark, and Maria Leach were the servants who were absent at the time. After the murder, I saw these servants first when I was lying at the bottom of the stairs. Holmes was the first I saw. I saw the pistols first at the corner of the passage. After I saw the man, it was not a second before he shot me. I saw but one hand used to fire the pistol. The last two reports followed each other instantly. It was the width of your shoulders and your height that made me think it was you. I do not remember having said that I did not know whether you had a cap or a hat on. I had not heard of Mr. Jermy's turning you out of the farm which Mr. Colman occupies. I have not heard of any books being circulated about legal matters between you and Mr. Jermy. At least I think I once heard something about them. I do not remember a parcel being sent to Mr. Jermy and being sent back again because the postage was not paid. I have never seen Emily Sandford. Mrs. Jermy passed me before I was wounded. I first saw the wig which Hubbersty produced about a week before my second depositions. I do not recollect your being at the hall on the Tuesday before the murder. I had seen you several times at the hall. I think I remember you calling once when Mr. Jermy would not speak to you.

By Mr. Prendergast.—I was in a very weak state, and in great agony on my first examination. There was a light in the dining-room when the murder took place. It was at the back of the man.

Margaret Reed was next called. She said: In November last I was cook to Mr. J. Jermy, at Stanfield Hall. I had lived there five months. On the evening of the 28th of November, Eliza Chestney and I were in the servants' hall, when I heard a report of a gun outside the house. This was half-past eight o'clock. Soon afterwards I heard another report, which was inside the house. Before Eliza Chestney left the hall, I heard a noise like the rustling of clothes, which appeared to come from the side door. After she left, I heard a third report, very soon after the second. I heard a scream of a female. I rushed to the servants' hall door, which opens into a long straight passage. I saw Miss Jermy running to the servants' hall, screaming, "Oh! Reed, we shall all be murdered!" I then saw a man coming down the passage, about seven yards behind Miss Jermy. He had a fire-arm in his right hand. I do not know

whether it was a gun or a pistol. It appeared to me larger than a usual sized pistol. He had on a coat or cloak, which appeared to have a cape. It was a low, stout man. I had seen Rush at the hall repeatedly. The head, and size, and carriage of the man were like those of Rush. As soon as I saw him, my impression was, that it was Rush, and that is my impression still. Miss Jermy and I ran into the stable out of the servants' hall.

By Rush.—I saw Emily Sandford the other day after the murder. I had no conversation with her. I only heard her ask for a glass of water, which was brought to her. I saw her in the cook's pantry.

The prisoner.—Recollect, God Almighty hears what you are saying. Did you or did you not see her in the butler's pantry?

Witness.—I did not. I think I saw her in the morning. She was several hours in my pantry, but I did not stay with her more than a minute. No one was with her when I saw her. I went in several times to the pantry, but only spoke to her when she asked for the water. I did not tell her the evidence I was to give, nor did I hear anything she had to say. I saw her yesterday going before the Grand Jury. I do not remember having seen her since the day after the murder, except yesterday. There was sufficient time to go from the porch to where Mr. Jermy was shot between the first and second reports. I made that statement before the magistrates.

This witness's depositions before the magistrates and coroner were read at length, at the request of the prisoner, who complained of the discrepancy between them and her present statement, and which he said he should comment upon at a future stage of the proceeding.

Cross-examination continued.—Prisoner.—Why did you not say before the coroner, as well as before the magistrates, that there was time between the first and second shot for any one to go from the porch to the place where Mr. Jermy was shot?

Witness.—I don't know.

Prisoner.—Did anybody tell you to say so?

Witness.—No, no one; I knew it myself.

Prisoner.—Do you know the meaning of the word "intervene?"

Witness.—I do not; if you will explain it I shall know next time.

The Judge.—Pray do not be flippant in your conduct.

Prisoner (to witness).—You should not use words then that you do not understand. (This word, "intervene," was in the witness's depositions.)



Witness continued.—It is about six yards from the foot of the back staircase to the side of the passage. I saw no one else in the passage but Miss Jermy. The man was about two yards past the foot of the staircase when I lost sight of him. I do not remember any one asking me about the murder, before my examinations. I will not state positively that no one asked me. I was not guided by the fact of a ramrod being found, in stating that the man had a short gun, or a long pistol. I never picked up any pieces of lead after the murder. When I saw the clcak at the Bridewell, I said it was longer than the one I saw in the passage. The one I saw at the Bridewell came past the knee, but the one I saw in the passage did not reach the knee. I first saw Watson when he came to the stable. I saw Blanche Flower first in the nursery after the murder had been committed. I noticed that you carried your head on one side, by your coming occasionally to the house. I do not remember speaking of it to any one before I mentioned it at the coroner's inquest, or before the magistrates. I have had no remarks made to me about giving that evidence. I cannot write my name. The cape I saw in the passage was sticking from the right shoulder. I cannot say whether it was the same as that I saw in the Bridewell. I did not observe the posture the left hand was in. I have not heard of any papers about legal matters between you and Mr. Jermy being circulated. I did not know that you were turned out of Stanfield Hall Farm.

By Mr. Evans.—The man in the passage had his head on one side.

Emily Sandford's evidence in chief as follows, was given on the second day of the trial. She was attired in a black satin dress, with a crape veil over her face, which she lifted over her bonnet (also black) on entering the box; she appeared very weak and dejected; she sighed frequently, and often turned her eyes to the prisoner.

Before she was sworn, the prisoner (who seemed in no way affected by her appearance) said—My lord, I must make one observation. I have a higher power than your's to say to this witness, that I am not guilty of the charge that I am charged with.

His lordship.—The jury will say whether you are guilty or not.

The prisoner.—I cannot help it, my lord, I must say so. In every respect, I am quite willing she should speak the truth.

His lordship.—If she does not speak the truth, she will be subject to the pains and penalties of perjury in this life, and to punishment in the next.

The prisoner.—I have never yet had an opportunity of speaking to her, and I wish to have her well consider what sort of evidence she is about to give.

His lordship.—You do yourself no good by——

Prisoner.—I cannot help it, my lord ; it is my duty ; I can prove my innocence.

His lordship.—If you can, no one will be more satisfied than myself.

Prisoner.—I wish to say that I have never been angry with her for contradicting her first evidence. I have sufficient to prove that I am innocent.

His lordship.—You are entitled to be in court while her evidence is given, unless you misconduct yourself. With that leave, the evidence can now proceed.

The witness then deposed.—My name is Emily Sandford ; I was living in London, in lodgings, about twelve months ago. About two years ago I became acquainted with the prisoner. I went down and lived with him some time at Stanfield Hall Farm. After some time, I went to London with him. It was about the beginning of February, 1848. The prisoner and I lived together at No. 2, Mylne-street, Islington. I went there under the name of James. One evening in October, I remember some persons coming to Mylne-street. Mr. Larnér, Mr. Thomas Jermy, and Mr. R. Read, were the persons present. Some writing was produced that evening ; it was in my handwriting. The document produced is in my writing. It was on the 3rd of October, the time that the deed bears date. I wrote that paper the same day ; I wrote it before the parties came, from a copy given me by Mr. Rush, in his handwriting. He told me to copy it. Before they came I gave my writing to him. They came about six o'clock, and Mr. Rush then produced this paper, which they signed. It had remained on the table from the time I wrote it. It was read over aloud in their presence ; by whom I cannot say. It was then signed by all parties. That signature is mine. I saw the parties sign.

[Witness was now so overcome that she wept much. Her medical attendant came forward, but she said she was not ill.]

I did not put my name to the deed until Read, Larnér, and Jermy were gone. I put my name to it by Mr. Rush's request. It was, I believe, proposed by Mr. Rush and Mr. Read, while the parties were all present, that Mr. Larnér and Mr. Jermy should go to Felmingham.

From the conversation, I understood the reason was, that they were to go into one of the farms. It was said that Mr. Rush was to furnish the means for travelling. I understood that Mr. Jermy and Mr. Larner were cousins. The parties left, I think, between eight and nine. I never saw Larner or Jermy afterwards ; but I saw Read afterwards at Norwich. The next day but one, the 5th, I came down to Norwich by Mr. Rush's direction. He left on the 4th. It was arranged before we left London, that I was to go to the Bowling Green Inn, in Norwich. I arrived on the 5th.

Mr. Rush met me at the railway station. He immediately proposed that we should go to Potash that night, and he took me in his gig. When we got to Potash, I understood from Mr. Rush that his son and son's wife were at Felmingham. I went into the parlour, and the servant brought a light ; I then went up stairs.

There are two bed-rooms in that part of the house, both opening into a passage. The staircase from the lower floor leads into the passage. There is a door at the top of the staircase into the passage. We both slept in one room that night. I left Potash again, I believe, on the Tuesday following—the 10th ; Mr. Rush told me in the forepart of the day that he was going to drive to Norwich ; after tea, he said that Savory should drive him. About eight o'clock the gig was brought to the front door, and I and Mr. Rush got in. He did not say where he should take me to. The boy Savory led the pony, as it was dark.

While on the road, he said he should go by himself across the fields to Stanfield. I said I wished to go with him as far as possible, as the ground was very wet. We both went in the gig, through several fields, towards Stanfield Hall. We came to a ditch, and could get no further. Mr. Rush then proposed that while he went to the hall, I should remain in the gig with Savory. I did not agree to that, but wanted to go with him. We then left Savory with the gig, and got over the gate, and walked on towards Stanfield Hall. He said, when we got to the bridge, that I had better remain out while he went in. I did so, he promising that if I was wanted he would send for me, or come himself. I remained outside about twenty minutes, when Mr. Rush again joined me. I asked if he had agreed with Mr. Jermy. He said, "Now, I think he will," and then he went back to the gig, and we went together till we got out of the fields, when he left Savory to drive me to Norwich ; while in the gig with me, I asked him to go on to Norwich with me. He replied he

would if he had not to see Mr. Read. I had understood before that Mr. Read was to come down to Potash. I asked him who would be present to receive Mr. Read and get supper, as I knew there was no one to do so. Nothing more was said on the subject; but he told me to go to the Bowling Green Inn, and he would see me on the morrow or next day. Savory drove me to the railway station at Norwich, to get my boxes, and thence I went in a fly to the Bowling Green Inn.

I slept there that night. The landlady told me something, and I went off the next day to the Swan. I wrote a letter to Mr. Rush from the Swan, to say that I was there, and on the Friday night he came. That was the day Mr. Read came. On that occasion both Mr. Rush and Read were present, and I understood they were going to London. Mr. Read went out to take a walk, and Mr. Rush was left with me. He asked me to copy some papers for him, which he produced. He gave me a copy of a notice. I began to write out some paper for him, but he called next morning, and said he would not trouble me to do it. I do not know whether the paper was destroyed; I gave it to him.

Mr. Rush returned to Norwich on Saturday morning from London. It was on the Thursday, I think, that he gave me the paper to copy. On Saturday morning he breakfasted with me. The same day I went to lodgings to Mrs. Stacey's. He left me there, and I believed went home in the course of the day. About a week afterwards he called on me at Mrs. Stacey's, when he showed me some pieces of paper, and told me he had something to occupy my time with. He produced a written paper that I was to copy from, and gave me the paper I was to write upon. He gave me one stamped piece first. I wrote the copy, as desired, upon the piece of stamped paper, and I finished it before he left. He dined with me that day. After I had made one copy, he wanted me to make another, which I did. This was also on a piece of stamped paper. He took both pieces away with him. The Sunday afterwards he came again.

[Prisoner here complained that the counsel talked loud enough for him to hear them; and thought that if he could hear, the witness could hear also.]

He showed me one of the papers again on the Sunday, after returning from the Cathedral. He dined at the White Hart that day. He said, "I want you to put your name to what you did for me the other day." He produced the copy I had written; I believe he produced both of

them. The name of "I. Jermy" was written at the bottom. It had been added since I copied the paper. He said to me, "Write your name, and the word 'witness,' " which I did. The paper now produced, and marked C, is the one referred to. Mr. Rush left Norwiche about four o'clock on Sunday afternoon. The date of the paper was the date of the day when I went to Stanfield. He said I might be a witness, though I did not go there. We had some words about the matter. He said he did not wish to make me a witness. He told me the papers were only copies. I wrote a letter to him on the subject on the Monday; I do not know whether he destroyed it.

Mr. Edward Cann, clerk to Mr. Cann, solicitor, was here called, and proved that he served a notice on the prisoner (a copy of which was produced) on the 22nd of March.

The notice was then read. It required the prisoner to produce the letter written to him by Emily Sandford.

His lordship (to the prisoner).—Do you produce that letter?

Prisoner.—I have never had any of my papers; I am quite willing the letter should be produced, if there ever was one; but I deny that there was such a letter.

Mr. Cann was sworn, and said he did not find the letter among the papers found on the prisoner's premises. He was cross-examined by Rush as to the time when the papers were found.

The prisoner said.—Let any one consider the situation I am in to produce any papers. There are other papers amongst those which have been taken, of the highest importance. I say there was no such letter there, but there are other letters of Emily Sandford's, which ought to have been produced.

His lordship.—Mr. Cann says he found no paper of that description, and that is all that we are now inquiring into.

The witness (Emily Sandford) then proceeded—The letter I wrote was on the subject of my signature to the deed. I said it would be putting me to swear falsely. The next night he came to me, and spoke to me on the subject. He was very angry at my having written, and said it was very indiscreet to write about such matters. He asked me if I had a copy of the letter I wrote. I looked, and found one in pencil. I gave it to him, and he tore it up. He left the same evening; and one day in the week after, he came and told me I should go to Potash on the Friday following, the 3rd of November. On that Friday he took me to Potash;

young Mr. and Mrs. Rush were there at the time, and the two servant maids. I took possession of one of the bed-rooms. [Witness was here shown the model, and explained the position of her own and the prisoner's rooms.] We generally had our meals in that room for some little time, and slept in it also. We lived so about a week, and then went down one day to air the furniture in the parlour. We did not continue to live below stairs. While at Potash, on the 21st, the Tuesday before the murder, Mr. Rush produced something again for me to copy. I did so on stamped paper, in the morning, and Mr. Rush took them, and went out, saying he was going to take the original to Mrs. Jermy to sign. I wrote three documents, which I thought at the same time were the same. He went to Stanfield Hall, and returned to dinner, having been gone two hours and a half. I asked him if Mr. Jermy had signed, and he said "No ;" but he was going to call in the afternoon again, on his way to Felmingham. He said Mr. Jermy had behaved very kindly, as though they never had any words. He said, "What a strange man Mr. Jermy is." He said young Mr. Jermy kept coming in to hear what the conversation was, but old Mr. Jermy desired him to leave the room, saying he was not wanted. After dinner, about three o'clock, he told me I had better take my walk, as he had a little writing to do. I did so, and came back in half an hour ; and when I returned, a great many papers were on the table ; and after I had taken off my things, he said, "I wish you to put your name to those papers you wrote for me." I saw two of the papers—those produced are the same (receiving them from the learned counsel). There was a third—two like that marked B, and one marked A. They were not open when I signed them ; he said, "Put your signature to these, and the word 'witness.'" They were partly folded—I put my name and the word witness first, and then he signed his name. These signatures are my handwriting. The word "Isaac Jermy" I did not notice when I signed. I do not know whether they were there or not.

Counsel (to his lordship).—This is the paper marked B.

When I gave him the paper (B) in the morning, the name Isaac Jermy was not there. I signed another (marked A) in the afternoon. This signature and the word "witness" is my handwriting. When I put my signature to it, I think the name Isaac Jermy was upon it ; but it was not there when I gave it to him in the morning. Mr. Rush did not write his name to this while I was present.

Mr. Rush dined at Potash, between one and two o'clock. Towards the evening, he said he had seen a fresh stake driven into the ground. I understood that he meant that a stake had been driven in by poachers, and that he should go out after them. He had been out in the evening several nights before. He had only been at Potash three or four days, when he told me that he used to go out after poachers. On the Friday we took tea about six o'clock. Mr. Rush was standing by the passage window when I was getting tea ready in the bedroom. He said, "Make haste, and get the tea ready ; it is just the night for those rascals." We sat down to tea, and while we were at tea he wanted a little spirits. He complained of being unwell, and said he would have some gin in his tea. I recommended him to take brandy. He said he should prefer gin, and went to get some from the closet. He got the gin, and poured some into his cup, and drank it with his tea. He asked me to have some, and I took a little in my tea. He then got the gin-bottle, and drank some gin from it. I cannot tell how much he drank. He said the gin would keep the cold out, as he was going out. After taking the gin, he went down to give his son some letters to take to the Wymondham Post-office. He then went up stairs into his bedroom, and told me to clear away the tea-things, and go into my own room. He told me, also, that when I got into the room I was to put out the light, and watch James, his son, up the road, to hear when he passed, and let him (Mr. Rush) know. I did so ; and he then told me to return to my own room again. He was at this time in his own bedroom, with the door shut. I closed my own room door as near as it would shut. He had, on prior occasions, when he was going out at night, told me to go into my own room.

I asked him to take Savory with him on this occasion, saying it was dangerous to go after poachers alone. I heard him go out, but did not see him. The door from the staircase was shut, but not locked. I heard him again that night, about half-past eleven, come in at the front door, and come up stairs. He opened the passage door, and said, "Where are you?" I told him, "Here—in your room." He said, "Step into your own room a moment." I had a light in his room. I went into my own room, leaving the light in his. I heard him go into his bedroom ; he shut the door, but I cannot tell whether he locked it. I had no opportunity of seeing him when he came in. He left the house to go out about half-past six or seven o'clock. After he returned, I remained in

my room about a quarter of an hour, in the dark. He opened then the door of his own bedroom, and said, "Are you not coming in?" I went into his bedroom, and found him in bed. I thought the spirits he had taken had affected him. I said to him, "You appear tipsy, and it's that nasty gin." He said, "Yes, I was a fool for taking it, and I feel very unwell." I made him some tea. I observed a pair of stockings, which he had worn, very muddy. I did not notice any other articles of his dress. The stockings were drying on the fender; they were muddy and wet about the ankle. I let him sleep some time before I went to bed. He slept a short time, and I aroused him to take the tea. It was about two o'clock when I made the tea for him. He went to sleep after taking the tea. In the course of the night, about two hours after he had taken the tea, he rose up in the bed, and said he was afraid he had lost something. He went about the room to look for something, and found his keys under the bed. He unlocked his closet, and searched about amongst some things. He said, "I have got it—it's all right." When he said he had lost something, he said if he could not find it, he must go out and search for it.

(The witness here appeared much affected, and it was suggested that she should retire for a short time.)

The Prisoner.—It is a long while, my lord, for her to sit here; if you were to let her retire for five minutes, she would perhaps feel more collected.

The witness, on being asked by her female attendant if she would like to retire, replied in the affirmative.

Rush followed her with his eyes until she left the court, when he resumed his seat in the dock.

The court then adjourned for ten minutes. On the re-assembling of the court and jury,

Emily Sandford's examination was proceeded with; it related to the night of the murders.

I was in the parlour. He had been in his bed-room about a quarter of an hour before he left. I heard him come down stairs, and pass into the sleeping-room, and speak to the boy Savory. I did not see him at all then. I heard him go all the way through the back premises. I was in the house by myself after he left. As he returned from the sleeping-room he said, "Fasten this door after me," meaning the porch door. He returned about nine, or half-past nine o'clock. I heard him rapping at the



door. I went and asked, "Who's there?" He said, "It's only me—open the door." I opened the door, and went into the parlour, and said, as I did so, "It's undone." He then came in and went up stairs, but I did not see him. I closed the parlour door when he was going up. I asked him if he would have a light. He said no—he could get one up stairs.

As he passed the parlour door, he told me to go to bed. I remained a few minutes in the parlour, when he came down into the room. He had neither coat nor shoes on when he came down and went into the parlour. He had either boots or shoes on when he came in. When he came into the room, he was very excited, and looked pale, ill, and agitated. He said, "Take the top of the fire off, and come to bed." I asked him what was the matter, and whether anything had happened?

He said, "No, nothing; if you hear any inquiries for me, say I was out only ten minutes."

He then told me to go to bed, and went to bed himself. I afterwards took off the fire, and threw water on it, and then went up stairs. I went to his door and just opened it. I went in about a yard, and asked him which room I should sleep in. He said, "In here." Immediately afterwards he said, "No, no." When he said that, he came towards me and said, "Go into your own." He added, "You want your dress unfastened. I went into my own room by Mr. Rush's directions. I observed, when I went into his room, that there was a fire burning bright. I had not lighted any fire before he came home. After I had been in my room some time, I heard him go down stairs. He returned very shortly to his own room. He locked himself in when I went into my own room. I got into bed then. After thinking a great deal about Mr. Rush, I fell asleep. About three o'clock in the morning Mr. Rush came and knocked at my door. I asked who was there, and he said, "It's only me; I want to wish you good night—undo your door." I undid the door, and he came into the bedroom. He said, "You must be firm; if any one asks you how long I was out, say only ten minutes." He added, "You may hear something in the morning." I was trembling; he said, "You appear as though you had the ague." He said he would fetch his great coat and put over me.

There was a great deal said that night. I asked several times what had happened. Once I said, "For God's sake what have you done?" I took him by the hand, and I found he was trembling very much. He

said something about his poor mother, and he hoped God would bless me, for I had done nothing wrong. As he went out of the room he said something about a hat and lining, but I do not know what it was about. I remember a peculiar pair of boots that Mr. Rush was in the habit of wearing; they were raised behind, and open at the sides. I have seen them repeatedly; saw them drying the next morning, as though they had been worn the night before. On the Saturday or Sunday I saw the boots in the house. Since that time I have never seen them. Some days previously, Mr. Rush took me to a closet in the parlour. There are two closets there, and one in his bedroom. He showed me where he kept his papers that were valuable, and said no one but his poor mother knew of the place. He showed me one of the planks which had to be taken up, and showed me how to raise it by a chisel, in case of fire. He always kept the closet in the parlour and that in the bedroom locked. On the Wednesday morning, at breakfast, he said, "Do you know that I had my slippers on?" I said, "I don't know." The cloak now produced belonged to Mr. Rush. I had it made up in London. It was kept in the closet in his room.

A cross-examination of this witness by the prisoner then commenced, which lasted during that and the following day, occupying upwards of fourteen hours. The palpable object of the prisoner was to turn this witness in his favour, and by all manner of wheedling and sifting to make her either voluntarily or unwittingly contradict herself. He had in fact visibly staked his life upon this chance, but he signally failed in his endeavour. Emily Sandford during the whole tedious interrogation testified calmly and clearly, without the slightest appearance of equivocation. She left the box unshaken in her evidence. The following portions of her cross-examination by Rush are given as characteristic of the whole.

Prisoner (to witness).—How has my conduct been, as far as you have seen of me, since you had known me, as regards my sensibility to feeling, and my disposition and attention to religious duties up to the time these transactions happened?

Witness.—You have always been of amiable temper towards me, and I never knew you to be anything contrary towards others. You had prayers on a morning since I came to Potash. That was done before I left Potash. They were read generally, but not always.

**Prisoner.**—Have you not invariably, before coming to bed to me, knelt down, and to all appearance to me, have said your prayers ?

**Witness.**—Sometimes I have done so.

**Prisoner.**—I do not recollect your ever missing.

**Witness.**—I cannot be positive I always did.

**Prisoner.**—That was your habit.

**Witness.**—I was sometimes behind the curtain.

**Prisoner.**—My lord, I wish to show what her conduct has been.

Have you any reason to suppose that your conduct has not been consistent with your offering up such prayers ?

**Witness.**—Do you think my conduct was bad, then ?

**Prisoner.**—No, no ! my dear, not at all ; I only ask whether you had any reason to suppose that you acted consistently with your saying those prayers ?

**Witness.**—I hope I did ; I did all I could to make you comfortable.

**Prisoner.**—Have I not repeatedly told you when you have complained of the expense you have been to me that the expense we were living at was less than when I was in London by myself ?

**Witness.**—I thought I was an expense to you, and when I said so, you said the expenses were not so great as you had before incurred. I taught music to ease the expense.

\* \* \* \* \*

**Prisoner.**—I say nothing about the promise of marriage I made to you ; I am quite willing to admit that. I ask you, was not that one of the reasons why you took the name of James, that it might be respectable for you to live with me as a housekeeper ? Have I not given you passages of Scripture that I said would sanction the way in which we lived together ? (Sensation.) Did I not say, also, that God Almighty would forgive us that sin, if we committed no other ?

**Witness.**—Yes.

\* \* \* \* \*

**Prisoner.**—This is a matter of the greatest importance. I have great love and fidelity towards you, and I pray to God that you speak the truth. What was the first time I came into your room ?

**Witness.**—It was towards morning. It was quite dark.

**Prisoner.**—Had you been asleep the first time I came in ?

**Witness.**—Yes, I had ; and you woke me by knocking at the door.

Prisoner.—Did I get into bed at all when I came home ?

Witness.—Yes ; you got into bed on the second occasion.

Prisoner.—Thank you ; that is right.

Judge.—Did he get into bed on both occasions ?

Witness.—No, only the last time.

Prisoner.—Was it not then that I complained of you as having the ague ?

Witness.—No, it was not ; it was the first time, when you were lying on the bed, that you complained of my shaking.

Judge.—You had your hand in his ?

Witness.—Yes, I had.

Judge.—Did he get into bed after getting the coat ?

Witness.—No ; it was not on that occasion that he got into bed.

Prisoner.—Provided you had not given the evidence you had before you would not have said differently now.

Judge.—That is a metaphysical question she cannot answer. You may ask her whether she is answering the questions with reference to the facts of the case, or with reference to her previous evidence. Are you (to the witness) answering the questions according to your best recollections of the truth ?

Witness.—I am, my lord.

Prisoner.—Was I in the closet when I mentioned the secret place in the closet, or in the parlour ?

Witness.—You were not in the closet, but you had to go to the closet for something.

Prisoner.—That's right. (To the Judge.) You may put that down. (To witness.) Did I ever deny you going into my closet ?

Witness.—I have been in it.

Prisoner.—It has been left undone ?

Witness.—Yes ; once or twice the key has been left in the door.

Prisoner.—Have I ever denied you going into that closet when you wanted ?

Witness.—I never was denied, because I never asked. I have seen the keys in the doors twice.

Prisoner.—Did I not eat a hearty breakfast on the morning I was apprehended ?

Witness.—Yes.

Prisoner.—Have you read the reports in the papers to see the evidence against me ?

Witness.—Yes.

Prisoner.—By whose directions were they given to you ?

Witness.—By no one's directions.

Prisoner.—What papers were they ? You read them in the London as well as the Norwich ?

Witness.—No ; I did not see the London papers.

Prisoner.—Do you recollect when I came up to the landing between your bedroom and mine, and when the police were with me, that I told you what had taken place ?

Witness.—No, I do not.

Prisoner.—Did I tell you nothing ?

Witness.—Yes ; you said there was something up at Stanfield Hall.

Prisoner.—Did you not know what had happened ?

Witness.—No.

Prisoner.—What did I tell you at last ?

Witness.—You told me that the two Jermys were shot dead ?

Prisoner.—How many police were in the room when you looked into my room that morning ?

Witness.—There might be a dozen of them.

The Judge.—You have occupied the Court some hours with questions totally irrelevant, which do not apply to the case.

Prisoner.—You have no right to say that, my lord ; you are prejudicing the case.

Judge.—Well, I mean to conduct this case with all possible patience, and perhaps I ought not to have made the remark. You are quite right in making the remark. Go on.

\* \* \* \* \*

Prisoner (to the witness).—Do you recollect me ever putting my name to any paper with Mr. Jermy's signature to it ?

Witness.—No.

Prisoner (to the Judge).—Have you put that down ?

The Judge.—Not yet.

Prisoner.—Then put it down: (Laughter.)

The Judge.—Did you ever see him sign a paper in which the name of Jermy appeared ?

Witness.—I can't recollect whether I did or not, my lord.

Prisoner (to the Judge).—Put that down.

The witnesses for the crown concluded their evidence on the Friday, and Rush entered on his defence the following morning. A strange scene, however, occurred prior to his coming into court.

Mr. Pinson, the governor of Norwich Castle, before the reporters were admitted, called them together, and expressed a hope that they would keep their pen-knives, or anything which might be made available as a weapon, out of the reach of Rush, stating that he did not ask this without reason. During the night the prisoner became exceedingly violent, and vowed revenge against the witnesses who had given evidence against him. It was, therefore, feared that he might lay violent hands upon his own life, or attack any one within his reach, if the means were placed within his own power. In consequence of the threats used, and the apparently ungovernable rage which had taken possession of the prisoner, the rows of small iron spikes at the rear of the dock and across the narrow passage between it and the body of the court were covered over with stout pieces of wood, fastened down over the points, so as to render the spikes useless in any attempt which the prisoner might make on himself or others.

The conduct of Rush during the night was ferocious in the extreme, and more like that of a demon than a human being.

These revelations caused the greatest excitement in the court, which was again crowded.

Rush was brought in in the custody of the governor of the gaol. He looked more pallid, but there was no very perceptible change in his demeanour. He did not appear to notice the alterations which had been made in the dock ; and, taking his accustomed place in front of one of the turnkeys, proceeded to arrange his papers, with the aid of a legal assistant, who was separated from him by a temporary partition.

After shortly re-examining a witness, the prisoner proceeded to address the jury, at times reading from the great mass of papers before him, and speaking in a low, mumbling tone, so as to render his statement very incoherent. He said—

My lord and gentlemen,—I am now about to submit to you my defence on one of the most important and awful charges I ever heard brought against any one in this country ; and in doing so I have to beg of you to assist and support me under so awful a responsibility. I have pre-

pared my defence, and God is my counsel, to clear myself against the horrid charge which has been so unjustly brought against me.

I am quite aware that the observations I made to the principal witness against me in the course of her evidence, and the questions I put to her on her cross-examination, and to some of the other witnesses, may not be understood ; but they were put on this account, that she having done a previous wrong by departing from the evidence she had given on her first examination, I made up my mind to abide the consequences and tell the truth till the time came when all should be clear. I have been advised by my solicitor not to go beyond what has been proved ; but have made up my mind to do so, and to draw your attention to what I have done.

I hope and trust in God you will act so as to obtain the ends of justice, and that, as far as you find me concerned in any knowledge of something serious having happened at Stanfield Hall, you will, beyond that, acquit me of the crime, and say at once I am and must be innocent of such a horrid affair.

On the 18th of January, I wrote a letter to my solicitor, giving him a strong intimation with respect to how I came to know something serious had taken place on the night of the murder at Stanfield Hall, and that I had every reason for thinking, from the way in which I and Mr. Jermy were living for the eighteen months previous, I should be suspected, and what were the means I took to avoid suspicion.

[The prisoner here began to look over his papers, and departed from the line of his defence into a long statement as to the manner in which he had been treated by the magistrates while employed in drawing up documents for his defence. He complained that he had not been permitted to communicate freely with his solicitor, and that the latter had sent a memorial to Sir G. Grey on the subject, who (the prisoner was understood to say) had sanctioned the course pursued by the authorities. He hoped his lordship would assist him, as far as was consistent with the ends of justice, in giving him every indulgence on that account ; that he (the judge) would bear in mind the way in which the principal evidence had been given against him, without his being present, which was done with the object, he contended, of prejudicing public opinion against him ; and that he would give him every latitude to make up for the injustice.]

The letter (continued he) I wrote to my solicitor, he never got. I was not allowed to give him my instructions, and the letter never reached

his hands. It was in substance as follows—(here the prisoner dropped his voice, and read at once so indistinctly and rapidly that it was scarcely possible to catch what he said. The substance of it ran thus):—

About two o'clock on Friday, the 24th of November, a man told me that he and a lawyer were coming to Potash to speak to me that night, about eight o'clock, concerning taking possession of Stanfield Hall, as they had done some years before, and that he would like to hear from me what I thought of the matter, and what help I could muster for them. I said, "Very well, they might do as they liked; but that they must not come to the house, for if they were seen at Potash, I would be sure to be suspected, from the way in which Mr. Jermy and I had been living for some time back." I said, "You should come into the garden at Potash, when I will see you and speak to you."

About eight o'clock I went out, and looked about the plantations to see if any one was standing about. The man was standing in the orchard, and the lawyer with him. I was on the outside of it. We went into the fields where the stacks were. I stood by the stacks. He asked me what I thought ought now to be done—that he intended to take possession at once. I told him I thought it (his plan) a very dangerous one, and that to take possession would require plenty of help; and even then I did not think it would succeed. He said he had seven or eight others with him—that they would remain there all night, and see what was to be done. I told him they would do something which would be spoken of, as they did before, and that then they would be sorry for it. He said, "I will try the same way you did." I told him he would be turned out. He said, "No, no; nonsense. No one would have dared to break the doors open when we took possession before, if you had not gone down and broke them; and 'that he was sure the soldiers would not dare to interfere.'"

The Judge.—I wish you could raise your voice a little.

The Prisoner.—My lord, I have plenty of evidence.

The Judge.—I do not mean to interrupt you. I only wish you to raise your voice.

The Prisoner.—I hope you will excuse me, for I have had a great deal of talking.

I said, "You ought to know best; but I think different." He said, "I have not the least fear; there are one or two more of us who will be completely able to do this. We will use no violence; and if the servants



should be kept from giving an alarm, everything will be right, and we will have plenty of help in the morning." He then said it was coming near the hour when the others should come, and asked me if I would come with him to show him the way to the hall. I said I had no objection to do so, but thought he said he had been across the fields two or three times. I showed him the way, and I then left him.

The Judge.—What day was this?

On the Friday, my lord. He and the other went on, and I followed them at a distance, and heard them going towards Stanfield Hall. I went as near the hall as possible, to see if they made any attempt. I wandered about for about two hours, but I heard nothing more of them, and I went back to Potash, where I got about eleven o'clock.

I never heard anything more of them till the 28th of November last. On that day the man called Joe and a lawyer came to me at Potash, and said he called once more to ask me if I would aid him in getting possession of Stanfield Hall; that if I once got in I should have plenty of help; and that they would not want me to assist them for more than half an hour. I told them that I would not, and that they ought not to expect me, after what I told them on Friday. (One reason of my being at Potash was to prevent my son getting into trouble, owing to the men going there.) They said if I would not help them, they had made up their minds to do it by themselves, either next evening or morning; but that some thought it would be best to make the attempt in the morning; that others, besides the lawyer, thought it would be better and safer to take possession in the evening; that he had six or seven more to aid him; and he thought there was more dependence to be placed on them, than seventy or eighty in the morning; and that there would not be half the hubbub in getting in. I said, "Very well, you know best; but I don't agree with you; I fear you will do something wrong."

They went away, and I went out towards Stanfield Hall that evening. They were then in the fields, walking about on the lawn. They did not seem to have fully made up their minds what to do. I went back, after waiting about three hours, and went through the wood towards Potash. As I was going towards the farm, I met Joe. I said to him, "Your coming in at night is not right, as you'll find out when too late." He said, "Before we do anything, I and the lawyer will call and let you know how we are going to proceed." I said, "I wish to know nothing about it; if you do anything, I shall hear of it in the morning." He

then left me. I went on home. I had some prepossessions of fear at the time, though I did not think anything serious would happen.

I left Potash about, or a little after eight, as I shall prove very clearly to the satisfaction of your lordship and of the jury hereafter. I thought I would go as far as the farm, and had some thoughts of going to the hall ; but in going along I made up my mind not to go near it. When I got round from the plantations, I went down by the side of the farm ; and when I got to the fence of the Stanfield Hall Farm, I waited there about five minutes, and thought I would go back. Just then I distinctly heard the report of a gun or pistol in a direct line with the hall. Immediately after I heard two more shots, but not so loud. I was struck with amazement, as I thought that if they took fire-arms with them that it would be to intimidate, and not to use them. I then heard the bell at the hall ring, and I got back to Potash as quickly as I could, and went through the garden into the house.

This is the most important part of the letter, which I shall read before I am done. I had seen Joe pass repeatedly, and in Norwich. He was a man having the appearance of a porter, and always having parcels with him. I have seen him, also, with a basket, and twice leading a horse, as if he had something to do about stables. I have also seen another of the men, whose name is Dick, once or twice, and once I saw Joe at the door of a public-house in Norwich. The lawyer I never saw only twice ; the first time when he came to speak to me at Potash, the Friday before the murder, and the other when he and Joe passed from Potash to Stanfield Hall on the night of the murder. I never heard anything more of the matter except once, when I saw Joe and Dick at Norwich, when they told me the lawyer would come down to speak to me on Friday.

This is all I know, and how I came to know, of the proceedings on the night of the murder ; and the want of my insisting on my wish to communicate the particulars of what I knew to Emily Sandford when I came home that night has been of such serious consequences to me, herself, and to my dear children ; for I did not think that she, knowing me as she has done, could suppose that I could be guilty of such a horrid murder ; but my not telling her, and insisting, as I should have done, and her being at the hall the day after the murder, led them to believe I was the murderer, and led to all the consequences which have followed.

The prisoner then proceeded to call attention to the remarks made by the learned counsel for the prosecution in opening his case. He hoped

he would be able to satisfy them that those remarks, as well as the prosecution, were wrong, for the sake of his family and his dear little children. He then commented, at great length, on the evidence adduced. After which he continued thus :—

Whichever way they looked at this story, they would find that it was totally false. “ Murder will out ;” and he had no hesitation in saying that the real facts of the case at Stanfield Hall would soon come to light. He hoped God Almighty would convince Mrs. Jermy of the truth, and that she would at last be brought to feel that what he stated about the interview with Mr. Jermy was correct. If he was going out on any bad intent, or on such a horrid deed that night, he would have taken care to have been seen by some of his men, who could prove where he was out, and that he said he was going out after poachers. The basest lie that ever was said on God’s earth, was, that he ever drank anything out of a bottle. It was what he called a fifth or sixth edition, and her statement as to that fact varied in her evidence, but in every shape it was untrue. She would make the jury believe that he was drunk. Most people who knew him could say that he suffered wonderfully from bilious headache at short intervals ; and the reason why he told Emily Sandford to leave the room on the night in question very probably was that he was ill at the time. He had heard that a man who was in difficulties was taking away the game by wholesale, and that was one reason why he had gone out earlier than usual on Friday night. As to the pair of stockings that were “ muddy,” they all knew that it was quite ridiculous to talk of such a thing. They were introduced merely to give the learned gentlemen an opportunity of getting up their case. Then they make all this fuss about his going to Felmingham, and about the closet being burned. Why, it really was the case that the closet where the papers were kept was set on fire accidentally by the servant. But what had that to do with the case ? Yet, they wanted to make it appear that papers had been burnt. If she believed him guilty of the charge, whom had Emily Sandford to look to ? Her friends had not a farthing. They must consider, then, what a great temptation she was under, and how many motives she might have for all her story. She had said he was not well that night. He was, indeed, wonderfully hurt because he had refused her going to the concert, and she took it so gently, and that made him seem unwell. He would be on his oath, if he was dying, that it was an hour after tea before he went out.

After some further comments, he thus concluded:—He said again to the Jury that they ought to take time, and for the sake of his children, whose hearts were breaking, and for the sake of themselves and families, to divest their minds of all prejudices which they might have contracted before they came into court. They would consider it was possible for him to be the man seen in the hall that night. They would consider the discrepancies between the evidence of the different witnesses, and the remarks which he had made upon them. Let them consider the distance from the one place to the other, and what had been stated on that point, and he was sure God would lead them to decide in his favour. He trusted that God would guide them; and if there was a difference of opinion, they would think it the happiest day of their lives to stand firm and give no verdict; but if they found him not guilty, they would be blessed for it in their dying moments, that they did not return a verdict of guilty against an innocent man. He said again to them, let them trust in God and do their duty, and let them not be led away from the facts by the false evidence that had been given against him. Might God Almighty bless them and make them discern, and give them a wise and understanding heart. He desired and expected only justice at their hands; and he asked them this for the sake of his poor little children, who were destitute of a mother, and who were looking to them to return their father to their home. (Great sensation.)

(This was the prisoner's defence; the concluding sentences being read by him from a brief, and delivered in a slow and even manner, amidst the breathless silence of the court. Once or twice his voice seemed choked with emotion, but, after a pause, he recovered, and throughout his long defence he appeared calm and self-possessed.)

The Judge.—Will you repeat, prisoner, what you said about Dick, Joe, and the lawyer?

The prisoner produced in evidence a letter, stating how he came to know what had happened?

The Judge.—It can be no evidence; it is a letter from you to your solicitor. That is no evidence at all.

The prisoner then re-examined Mr. Cann, and examined two other witnesses to show that Howe, a witness for the crown, had said that he would come down to Norwich, and swear at either side for £20. Beyond this and a few questions put to Maria Flower, the nursery maid at Stanfield Hall, relative to her not recognizing him the night of the murder,

and to Savory, the servant at Potash Farm, relative to the time of his leaving home, the straw laid down, and the poaching going on, the prisoner offered no evidence. After Mr. Sergeant Byles had replied, Baron Rolfe thus delivered his charge :—

He said :—Gentlemen of the Jury, your opinion on this case must be formed entirely on the testimony which has been given in this court. The first thing, therefore, is to consider what the fact is which now claims inquiry. We are inquiring into the murder of Isaac Jermy, and under what circumstances he came by his death. That you must learn from the testimony given in the few preceding days. It is detailed by a number of witnesses, and of the fact there cannot be any reasonable doubt ; but, as from the peculiar circumstances it may be desirable to show that death took place, I shall call your attention to what each witness says on the subject. [The learned Judge read in succession the evidence of Watson, Eliza Chestney, and Margaret Reed, the cook.] He then continued : That is the account of the murder given by the three witnesses alluded to. It is confirmed by two pieces of evidence also put in on the part of the prosecution. I allude to the depositions of Mrs. Jermy, one of the unfortunate sufferers, and of Maria Blanch Flower, the nurserymaid. Therefore, you have now the account of five people, who were more or less witnesses of what took place. Again, the testimony of Edward Harvey, the young man who was called early on Friday, is not unimportant. [The learned Judge read the evidence]. The testimony of Honor Holmes differs from Harvey in this respect, that she did not see anything, and that when they got one hundred and forty-five yards they heard a sound like the slamming of a door ; and that when two hundred yards away, the sound was repeated. I may say here by way of anticipation—it being certain that only four shots were fired, that the difference of the witnesses prepares us for what human experience shows, that when people are giving an account of transactions which excite them strongly, they never give the same account of them. This is admirably illustrated by the present case ; and you, gentlemen, must not attribute the least importance to such discrepancies. God knows if we shall ever be in such a state of excitement as these witnesses were then in ; but who can say that he would have his faculties sufficiently about him under such circumstances to observe what happened ? Even where there is no excitement, a great difference in the minute details of evidence always arises. In the present instance, one witness

who had his eyes to the door saw a figure and a flash of light, while the other, whose attention was not directed in that way, saw nothing. About twenty minutes after, the body of Mr. Jermy was found in the porch, and was carried, with that of his son, into the dining-room. Both were examined, and from both a number of pieces of lead were taken. Whether these pieces of lead were like round shot or slugs is entirely unimportant to the question which we are now considering. What, then, do we infer from all this? Whatever other matters are in doubt, it seems clear that the person who shot young Mr. Jermy was guilty of the murder of Mr. Jermy, senior, also. I cautiously use the words "was guilty of the murder," because it is a possible hypothesis that the hand that shot young Mr. Jermy was not the hand that shot his father. I need, however, hardly tell you that if two or more persons meet together on a common enterprise, and one kills one victim and the other another, they are both equally guilty of the murder of each. If it was done by two persons it was done in concert, because the hypothesis that they should come for such an object without concert is obviously absurd; but if there is any doubt about that, the similarity of the slugs found in the two bodies and on the floor proves the thing to demonstration. Therefore, it is clear that the man who was in the house was guilty of the murder of Mr. Jermy, whose body was found in the porch. There remains, then, only one thing, viz., to discover who was the man who shot Mr. Jermy. The prosecution says it was the prisoner, and that is the point which you, gentlemen, must satisfy yourselves upon. To show you who was the man, the first evidence is the same that I have already called your attention to in showing what the prosecution was. (The Judge read the evidence of Watson, Chestney, and Reed on this point. He was interrupted by the prisoner, who wished to have mentioned some little discrepancy as to his movements). The learned Judge then continued: It makes no difference in the world where the man was when Watson met him. It does not matter a farthing whether he had turned the corner or not. You see that out of the five witnesses who saw the murderer at Stanfield Hall, four state their confident belief that the prisoner was the man. The fifth never saw him before, and could only say that the murderer was a stout-built man. Now, this is very cogent as evidence, but, at the same time, several observations would apply to the evidence, if it rested there. The very confusion attending such occurrences was unfavourable to such evidence, and I have pointed

that circumstance out in every case when laying evidence of the kind before a jury. There is no sort of evidence that is given which is more convincing, and yet which has been more frequently proved to be completely unfounded. A striking instance of this occurred in a case where a jury convicted a man of a gross and murderous attack upon another person. It afterwards turned out that they were mistaken. But, at the same time, in my experience, these mistakes were in the instances where men had to look at a person who was previously a stranger. We are less likely to be deceived in the appearance of a person we know, than by looking for awhile at one we don't know. If any of you, gentlemen, begin looking at a man sitting at that table, and he goes out, I think you would pause before you swore to him afterwards; but if you have only a sufficient knowledge of a man's appearance, a momentary glance will in an instant tell you that it is him. Take, for instance, one of your children; you will recognise him at once by signs which, perhaps, it is impossible for you to describe. You will say, "I don't know how, but I am as certain as I am of my existence. I feel a degree of confidence which it is impossible for me to doubt." The question, therefore, comes—Have these four witnesses a sufficient knowledge of the prisoner Rush? That as to Mrs. Jermy is as follows: Rush appears to have been on odd terms with Mr. Jermy, sen., sometimes calling on him, and sometimes quarrelling.

Prisoner—My Lord, I don't know this Mrs. Jermy.

Baron Rolfe—That is a proper observation, and I don't complain that you set me right. Yet one can't understand but that Mrs. Jermy must have been in the habit of seeing the prisoner. That being so, he was in the position of a man not an entire stranger. The servants were in the habit of seeing him go into the passage. It is made out that the man who was seen there on the night of the murder, was disguised—how we don't know. But if a person is well known, it is not quite so easy for him to disguise himself as at first sight may be supposed. That being so, the four witnesses swear as I have read to you. I would advise you not to pay much attention to the difference between the use of such words as "I believe it was the prisoner," and more positive expressions. All you know is the confidently-expressed opinion that the prisoner was the man. It thus becomes very important to see what other evidence there is—whether there are circumstances consistent with the guilt of the prisoner and inconsistent with his innocence. The main



evidence that is relied on for this I go on to notice. Rush is living at Potash Farm. His lordship then read his notes of the evidence of Emily Sandford; and when he came to that portion of it where she said the prisoner went out and returned about nine or half-past nine o'clock, observed, "Now, if he is a guilty man, it was during this interval he committed the murder; if innocent, he was otherwise occupied." Having concluded the notes of the direct evidence, his lordship proceeded to her cross-examination. The prisoner's account of his behaviour was, that he was moved to tears by reflecting on his behaviour to her, and by thinking in how terrible a position he had placed her, so that he could not take her to the concert. He says he was touched by her ready acquiescence, and moved to tears by the way in which she at once consented to forego her wishes with respect to the concert. She goes on to say that on the night in question he went out about seven or half-past seven o'clock.

Prisoner.—When you get on further, my lord, you will find something else; she said it was an hour and a half between the time I went out and I returned.

The Judge.—I can only state what I have got here. In her cross-examination by the prisoner, it was admitted by this witness that he went twice to her room that night, although she said nothing about the second occasion of his going into her room. It further appeared, in her account of that night, that the prisoner, on going into the room, had talked a good deal, and that, among other matters, they had spoken about the concert; and so far this bore out the assertions of the prisoner, for they conducted themselves as if they were man and wife, and as if nothing horrible had taken place. However, it is for you to say whether this was a blind or not; but, as far as it goes, it bears out what he says about the concert. Supposing nothing else had been proved, these facts would not show what he did, but they would show that he was at something or other which pressed very heavily upon him. If the evidence rested there, the effect of it would be that Mr. Jermy was murdered; that four people felt confident, more or less, that Rush was the murderer; that he was out at the time of the murder, and returned home under circumstances which showed his consciousness of something very terrible having happened. From the first moment this evidence was given, my attention went to show how the rest of the testimony might be brought to bear upon it, and how it could be explained away; for, as it stood, there



were two or three modes by which it could be cleared up. The prisoner, for instance, might have gone out in search of a poacher, and might have met and shot him. His agitation so far showed that something terrible had happened, but not that he was a murderer. But, coupling it with the fact that he was recognised at Stanfield Hall, it might be difficult to come to any other conclusion than that he was the guilty man. The prisoner, therefore, made a statement, the object of which was to show that all the witness stated was true—not strictly so, but slightly coloured; but that his conduct arose, not from the fact that he had been murdering Mr. Jermy at the hall, but that he knew something was going on, and that he was, therefore, agitated and alarmed.

Prisoner.—After I heard the fire-arms.

The Judge.—Yes. The account he gives is this—(His lordship read from his notes the statement in question, and continued)—Now, gentlemen, if this were true, the prisoner certainly would not be guilty of the murder of Mr. Jermy, but, morally, I could not see much difference in his conduct. He had heard shots fired, and the bell rung at the hall. He must have guessed something terrible had happened; but he went quietly back, and made no effort to assist the people living there. However, the morality of his act has nothing to do with his present guilt. But let us see if it is possible to give credence to this account, setting out of view that fact, that in spite of his animosity he should but have tried to save the life of one whom he called his friend, and of his son. When he was taken up next morning at eight o'clock, and when the police said to him, "You are said to be the man who murdered Mr. Jermy last night," would he not, if he possessed common sense, have said, "I murder Mr. Jermy! Never. I know who they were that did it, and I will give you the best account in my power. One of them is a man named Joe, and another is a man named Dick, and another calls himself a lawyer. They were the people who did it, because I know they were going to take forcible possession that night?" That was what a man's interest, under the circumstances, would have induced him to say. You, gentlemen, may form your own opinion upon it; but I confess that it is the light in which it strikes me. I am bound to see equal justice done between the prosecutor and the prisoner, and I see no other way in which I can put this. He knew a dreadful outrage was going to be committed; next morning he hears that two gentlemen have been murdered, and a lady and her

maid all but murdered, and he never says one syllable about the whole affair, except on this day, and in the course of last January, when he says he wrote a letter to his solicitor with an intention of stating all he knew about it. Here, then, the facts stand thus—(His lordship recapitulated the evidence so far.) You see, he returned home at the time in the greatest possible agitation. He knew something terrible had happened, because, according to his own statement, he had heard shots fired and the hall bell ring. He is taken up, and he never gives the least hint of this story, though it would have absolved him at once, if true; for, if so, there would have been some trace of the people he mentions; some of those persons engaged in the business would have come forward and said, "I was employed in taking possession, but I was not an accessory to a murder." But no one of these people is found—no one comes forward. I have watched with the greatest anxiety, and have looked over the papers to which I had access most carefully, to see what explanation could be given, and the moment he came to this part of his case, I devoted to it my most undivided attention, and this is my deduction. But if this statement should be an untruth, how does the matter stand? Not only do all these people say it was Rush—and not only is it proved he conducted himself in an extraordinary way on the night in question—but some time after he is arrested he concocts a completely false story of his whereabouts at the time of the transactions which then took place. These are the main features of the case so far, but there are details to which I shall shortly direct your attention. I say shortly, because, if the main features do not satisfy you of the prisoner's guilt, I never would have you to rely on very minute circumstances, as they are apt to deceive, and you cannot fully depend on them. These minor circumstances are these. The murderer dropped two papers in the hall. It has been attempted to be shown that these papers came from Rush. (His lordship read the notices signed "Thomas Jermy.") That Thomas Jermy knew nothing of these notices was quite clear. Who then wrote them? In order to show that it was the prisoner, Jesse White swore it was his hand-writing, though in a disguised hand, and that there were two or three of the letters which he knew to be Rush's. Now, I must say, if I were a juror, I would not attribute a feather's weight to this. The witness, no doubt, thought he was right, and might be so; but in printed characters such as these, it would be almost impossible to speak with confidence; and such evidence was unsatisfactory. All you can say is,

the papers were written by some one whose writing is not dissimilar to that of the prisoner. But there is other evidence of some importance. Among Rush's papers were found two books, just of the size and with similar covers to those produced. The prosecutors say that the covers on which the notices were written were like the covers of these books and I can only say the same also. In the books found in Rush's house are two, with the label of the makers ("Messrs. Gerrard") upon them. Mr. Gerrard, on being called, says, that in 1848 he made up certain books for the purpose of teaching book-keeping, in sets of five, three large and two small. The three large had labels upon them. The probability therefore, is, that whoever had bought two of these books would have bought the third, and, inasmuch as only two were found in Rush's house, that he must, at some time or another, have had the third. It is said that the covers on which the notices were written are exactly such covers as those of the missing book would have been. They are of three sheets of paper, in order to make them strong for children's use. This evidence is to my mind much more forcible than that of the handwriting; but I do not rely greatly on it, for, after all, who could tell but that the book might have been taken from the prisoner by some person, and the book might still be somewhere at his house? It is suggested that where two books are found, you should find three; and this goes in some degree to connect the prisoner with the notice.

Prisoner.—There is one observation I wish to make, my lord. Mr. Gerrard sold one hundred sets of these books. Do you think you could get them complete in every house you went to? This is really extraordinary.

Judge.—Well, that is very fair. I put the case in another way. There is another circumstance mentioned, but I don't think you can attend to it. The book missing is the cash-book. In the cash-books of the set, faint lines have been made on the covers by the ruling, and if it were light enough you could see similar traces on the covers produced. In addition to this it has been relied on for the prosecution that the prisoner was in the habit of going out about the same hour on several nights before the 28th, and the suggestion is, that he did so with the intention of committing the same crime which he afterwards had an opportunity of doing. Whether this may be so or not, I will not say.

Prisoner.—It's extraordinary to say I went out at the same hour, my lord; no such thing was proved.

The Judge.—I really don't think it matters whether you went out half an hour more or less. (His lordship then reviewed the effect of the evidence so far, and continued.) The morning after the murder the police went to Potash, and somebody at the hall must have told them to do so. It is stated by the prisoner that this should go to his favour, because they went there on account of his known hostility to Mr. Jermy. At all events, they had the police watching the farm, and the prisoner conducted himself like a man who had committed a great crime, as well as given a false account of himself when he is arrested.

Prisoner—But was it likely I should have made the observation I did to Emily Sandford, if such a thing had been on my mind?

The Judge—The prisoner suggests, gentlemen, that what he said when he went home was in his favour, and you are not to mind the inferences I draw, but to form them for yourselves. The next question is, what could have prompted the prisoner to so dreadful an act—one happily so unusual and unprecedented as for a man to go out in the dusk of an evening to murder the owner and the son of the owner of the adjoining estate, and to attempt the life of a lady and her servant? It is true, great crimes are often perpetrated without any imaginable motive, but when motives did appear to exist, they were so far a means of arriving at a satisfactory conclusion. On the part of the prosecution it is attempted to be shown that a most malignant feeling existed on the part of the prisoner towards Mr. Jermy. I confess I pay no regard to the evidence of Mr. Howe. I don't inquire whether it is true or not; but suppose a man talking to a lawyer or his clerk about a lawsuit were to use angry expressions, it suggests no more to my mind than if he said, "I'll break his head." Other observations of a similar kind I would dispose of in the same way; but these remarks do not apply to two letters put in evidence—one dated April 26, containing a most malignant strain of expressions towards the deceased, and another of an earlier date. But, in addition to this, there is attempted to be shown a long series of transactions which led to the result, that if the Jermys could be murdered, a large property, to the amount of many thousands, would come into the possession of the prisoner, and which if they were living he could not get. If this be true, it is not confirmed or weakened by anything I have said. The evidence of this motive is to be found in the papers to which I shall now call your attention. There were in London two claimants to the Stanfield Hall and other estates,

named Jermy and Lerner. The prisoner held leases of two farms at Felmingham, which leases would expire on Michaelmas. In October he entered into a negotiation with these men to put them into possession of the Felmingham property, on the understanding that they would sign an agreement to give a beneficial lease of those farms ; but as possession could not be had till the 11th of October, there was another agreement actually carrying out the terms of which the agreement of the 3rd of October contained the effect, signed subsequently. It was arranged that Emily Sandford should come down to Norwich on the 5th of October. She was met by Rush, and he brought her over to Potash. At that time it was occupied by his son and son's wife. She was taken to Rush's bedroom, which was separate from the rest of the house. On Tuesday following it was proposed she should go over to Norwich. It was arranged that Savory, the servant-boy, should drive her. The prisoner was to go in the gig with her towards Stanfield Hall, where he said he wanted to go. They went as far as they could in the gig, when they got out. He went to the Hall. She waited twenty minutes ; and when he returned, he said he had not finished his business with Mr. Jermy, but hoped he should do so. His lordship then read his notes of the subsequent evidence of Emily Sandford as to the copies of papers which she made at Rush's request while at Norwich. (His Lordship then read the papers, and commented on them with great care and minuteness, during which he was several times interrupted by the prisoner.) If those papers had been prepared before the murder, it is useless to speculate on any further motives. The forgeries could, of course, have been detected during the lifetime of Mr. Jermy ; but, after his death, these could have been put forward as genuine deeds. Supposing the wicked designs actually fixed on, there was no time to be lost. On the Thursday following the murder, Mr. Jermy would have a right to take possession of Potash. Here, then, the prisoner is connected with deliberate fraud, and he waited till the last moment of time when it was desirable to carry his design into execution. I have looked very carefully last night over all the evidence, to see if there is anything to affect the credit of Emily Sandford on these points, for, as to what took place on the night of the murder, it is impossible to deny it, because it is admitted by the prisoner. In her first depositions she stated what, if in charity, we must not think to be a deliberate perjury, was at least stated with an intention to deceive ; and there is certainly reason for distrusting, though not dis-

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believing, the evidence of a person who has departed from the truth. (His Lordship then read his notes of the evidence of Emily Sandford at length, and compared it with her depositions as he went along.) Looking at the case chronologically, you have a strong motive pressing on the mind of the prisoner to get rid of Mr. Jermy. Two nights before the time when it was necessary to murder him to make the forged documents available, he was murdered. The murderer was seen by five people, four of whom say it was Rush, though disguised. On that night he was from home at the time of the murder. He confessed that there was something on ; he was greatly agitated on his return, and told the woman he was living with to say that he was only out ten minutes. Before the magistrates he gave no explanation, but now he comes out with the story you have this day heard for the first time. It is quite clear that the dress he was in that night has been made away with. He confessed that he had burned the green frock ; the pair of boots in his bedroom were not accounted for. Do these things not convince you that he did the murder ? If from anything that has been said you have doubt, your verdict must be Not Guilty ; but at the same time it is not permitted to any body of men to conjure up doubts, if in the bottom of their conscience they feel none.

The Jury then retired.

The Prisoner, during the entire charge, sat with his head forward, and his hands resting on the front of the dock. His face wore a drowsy expression of fatigue and vacant ferocity.

After an absence of not more than five or six minutes, the Jury returned, and, to the usual question, " How say you, gentlemen, ' Guilty ' or ' Not Guilty ? ' "

The Foreman, amidst breathless silence, returned the verdict, " Guilty."

The Prisoner, in a deep tone of voice, said, " I am innocent, all the same ; and God Almighty knows it." His expression, however, never changed for a moment, and he retained to the close the same listless, sullen look with which he had listened to the Judge's charge.

Baron Rolfe then put on the black cap, and, amidst profound silence, proceeded to pass upon the prisoner the awful sentence of the law. He spoke in a tone of slow and measured solemnity ; and the severe dignity of his manner, and the power of his language, produced the profoundest impression. He said—James Bloomfield Rush, after a trial unusually

protracted, you have been found guilty of the charge of wilful murder—a crime the highest any human being can perpetrate on another—the deepest under any circumstances of extenuation; but I regret to say that in your case there is everything which could add a deeper dye to guilt the most horrible. It appears from letters which you yourself put in, that to the father of the unfortunate victim of your malice you owe a large debt of gratitude. You commenced a career of crime by endeavouring to cheat your landlord; you followed it up by making the unfortunate girl whom you had seduced the tool whereby you should commit forgery; and, having done that, you terminated your guilty career by the murder of the son and grandson of your friend and benefactor. More cannot be said. It unfortunately sometimes happens that great guilt is too nearly connected with something that is calculated to dazzle the mind; but, fortunately, in your case you have made vice as loathsome as it is terrible. There is no one who witnessed your conduct during the trial, and who heard the evidence produced, who will not feel as the result of that evidence that you must quit this world by an ignominious death, an object of unmitigated abhorrence to every well-regulated mind. I shrink not from making this statement, in order to point out to you the position in which you now stand. To society, it must be a matter of perfect indifference what your conduct may be during the few remaining days of life that remain to you. No concealment of the truth in which you may continue to persevere, will cast the slightest doubt upon the propriety of the verdict. No confession you can make, can add a taper light to the broad glare of daylight guilt disclosed against you. So far, therefore, as society is concerned, the conduct you may pursue is matter of indifference; but to yourself it may be all-important; and I can only conjure you, by every consideration of interest, that you employ the short space of life that yet remains to you, in endeavouring by penitence and prayer to reconcile yourself to that offended God, before whom you are shortly to appear. In the mysterious dispensations of the Almighty, not only is much evil permitted, but much guilt is allowed to go unpunished. It is, perhaps, presumptuous, therefore, to attempt to trace the finger of God in the development of any particular crime; but one has felt at times a satisfaction in making such investigations; and I cannot but remark that if you had performed to that unhappy girl the promise you made to her, the policy of the law, which seals the lips of a wife in any proceeding



against her husband, might perhaps have allowed your guilt to go unpunished.

The Prisoner.—I did not make that promise.

The Judge.—You have been convicted on testimony so clear, that observation and comment are unnecessary. Having conjured you to employ the small portion of life which remains to you in that which can alone interest you now, I have to remind you that human interests are for you at an end. I will only add my earnest hope that the sole social right that remains to you—that of entire seclusion—may be granted, and that no morbid sensibility to guilt, nor any idle curiosity of the vulgar may be suffered to pry into the secrets of the murderer's cell, or to raise a factitious interest in that in which you are alone concerned. It remains for me to pronounce upon you the awful sentence of the law—that you be taken from hence to the place from which you came, and thence to the place of execution ; and that you be there hanged by the neck until you are dead, and afterwards that your body be buried within the precincts of the gaol in which you are confined, and may the Almighty have mercy on your soul !

The prisoner, at the close of the sentence, was immediately removed. He preserved his coolness to the last ; and, as he passed out of the dock, closely guarded by turnkeys, he was observed by several gentlemen who stood near him to smile.

Rush, on his removal to prison, for some time exhibited the same stolid firmness which he had done at his trial : he subsequently appeared to become sensible of his situation, and to pay great attention to his religious duties, but this was appearance only. The wretch was really altogether devoid of any moral or pious feeling, and he merely employed the language of prayer, as he would any other means of deceiving those around him. A circumstance transpired that shewed his extraordinary coolness, and his perfect hardness of heart. During the trial, Mr. Cann, the solicitor, produced amongst other things found at Potash Farm, a pocket-book, containing memoranda and a check for £40. This pocket-book Rush asked to be allowed to inspect, and it was handed to him. During the few moments it was in his possession, and while all eyes were intently on him, he contrived to abstract the cheque, and conceal it in the lining of his hat. Upon missing it, Mr. Cann, after a vain search, requested the governor of the gaol to sound Rush on the subject ; he did so ; but Rush denied all knowledge of it, and kept to the false-



hood for several days. Upon being assured, however, that the governor would probably direct it to be applied to the benefit of his family, he acknowledged the theft, and pointed out the place of concealment.

Rush died without confessing; though attentive on religious matters to the chaplain of the gaol, to the Rev. Mr. Brown, and to a third clergyman, who visited him, he became very irritable if any allusion was made to the expected admission of his guilt. His repeated observation was, "God knows my heart. He is my judge; and you have prejudged me." Rush was hanged on a scaffold in front of Norwich Castle, over the entrance to which, pursuant to the High Sheriff, Colonel Mason's orders, there waved a large black flag, to mark the enormity of the crimes for which the culprit paid the forfeit of his life. The crowd present was immense. Rush preserved his callous self-possession to the last. His final words were addressed to the hangman, when, pointing to the knot of the rope round his neck, he said, "This does not go easy. Put the thing a little higher—take your time. Don't be in a hurry." This prince of malefactors perished by the hands of justice on the 14th April, 1849.

Many stories have been told of other crimes committed by him. One rests upon some foundation. The murderer was an illegitimate child, and his mother had married after his birth a respectable man, named Rush, who allowed her son to take his name, and who brought him up. This Mr. Rush was killed by his own gun, under circumstances so singular as to justify the suspicion that his step-son, the only person present, had deliberately slain him. Of the victims of the culprit Rush in his last offence little remains to be said. Emily Sandford, with the offspring of her guilty acquaintance with the murderer, went, through the aid of parties pitying her unhappy condition, to pass the rest of her life in Australia. Eliza Chestney has partially recovered, and has been justly much patronized and rewarded. Her mistress, Mrs. Jermy, has also survived her injuries, and was married, a second time, recently to Thomas, eldest son of Sir Thomas Branthwayt Beavor, Bart., of Hethel, in the county of Norfolk. Her daughter, by Mr. Jermy, has now inherited the Stanfield Hall and other Jermy estates.

THE END.

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